AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT AND EXEMPTIONS FOR RURAL COOPERATIVES FROM CERTAIN FEES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 861

AN ACT To amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes

S. 894

A BILL To exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976

AUGUST 4, 1982

Publication No. 97-116

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AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT AND EXEMPTIONS FOR RURAL COOPERATIVES FROM CERTAIN FEES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

WEDNESDAY, AUGUST 4, 1982

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 3110, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop and Melcher.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good afternoon. The Subcommittee on Public Lands and Reserved Water will hear testimony this afternoon on H.R. 861, to amend the National Trails System Act by designating additional national scenic and historic trails and for other purposes, and on S. 894, to exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976.

Without objection, I will place a copy of each bill in the hearing record. And the hearing record, for the information of those who are curious, will remain open for 2 weeks. The subcommittee will first hear H.R. 861 and then proceed to S. 894.

In H.R. 861, I support the efforts to recognize the use of volunteers for trail development, and the use of alternatives to fee purchase of lands. I am happy to note that these provisions have come about because of the subcommittee's workshops dealing with land protection policies.

H.R. 861 contains several provisions that would give the National Park Service and the Forest Service some new tools to apply land protection to units of the National Trails System.

I want to look very closely at the question of landowner liability and the landowner's responsibility when new trails are established. I am concerned about law enforcement along trails through private land. I believe that landowners adjacent to trails are often subjected to property damage, vandalism and law enforcement problems.

In S. 894, I look forward to hearing the equity arguments for and against granting rural electric or telephone cooperatives free access to public lands. I would be interested in hearing if there is a possibility of a discounted fair market value solution that could or would be done administratively and I would like the Bureau of Land Management to describe in detail how they arrived at their decision in the regulations that accompanied section 504(g) of the Federal Land Policy and Management Act.

[The texts of H.R. 861 and S. 894 follow:]

II

97TH CONGRESS
2D SESSION

H. R. 861

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, MAY 11), 1982

Received; read twice and referred to the Committee on Energy and Natural Resources

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AN ACT

To amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—LIMITATION ON APPROPRIATIONS

SEC. 101. Authorizations of appropriations under this Act shall be effective only for the fiscal year beginning on October 1, 1982, and subsequent fiscal years. Notwithstanding any other provision of this Act, authority to enter into contracts, and to make payments, under this Act shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

TITLE II—AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT

SEC. 201. This title may be cited as the "National Trails System Act Amendments of 1981".

SEC. 202. Section 2 of the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241 et seq.) is amended—

(1) in subsection (b), by striking out "the purpose" and inserting in lieu thereof "The purpose"; and

(2) by adding at the end thereof the following new subsection:

"(c) The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this Act to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails.".

SEC. 203. Section 3 of the National Trails System Act is amended—

(1) by striking out "composed of—" and inserting in lieu thereof "composed of the following:";

(2) by redesignating paragraphs (a) through (d) as paragraphs (1) through (4), respectively, and by inserting "(a)" after "SEC. 3.";

(3) in paragraph (2) of subsection (a) (as so redesignated), by adding at the end thereof the following: "National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.";

(4) in the fourth sentence of paragraph (3) of subsection (a) (as so redesignated), by striking out "Act, are established as initial" and inserting in lieu thereof "Act are included as";

(5) in the fifth sentence of paragraph (3) of subsection (a) (as so redesignated), by striking out "subsequently"; and

(6) by adding at the end thereof the following new subsections:

"(b) For purposes of this section, the term 'extended trails' means trails or trail segments which total at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length.

"(c) On October 1, 1982, and at the beginning of each odd numbered fiscal year thereafter, the Secretary of the Interior shall submit to the Speaker of the United States House of Representatives and to the President of the United States Senate, an initial and revised (respectively) National Trails System plan. Such comprehensive plan shall indicate the scope and extent of a completed nationwide system of trails, to include (1) desirable nationally significant scenic and historic components which are considered necessary to complete a comprehensive national system, and (2) other trails which would balance out a complete and comprehensive nationwide system of trails. Such plan, and the periodic revisions thereto, shall be prepared in full consultation with the Secretary of Agriculture, the Governors of the various States, and the trails community.".

SEC. 204. Section 4(b) of the National Trails System Act is amended—

(1) in clauses (i) and (ii) by striking out "Secretary of the Interior" and inserting in lieu thereof "appropriate Secretary";

(2) in clause (i), by striking out "agencies, and" and inserting in lieu thereof "agencies;";

(3) in clause (ii), by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(iii) trails on privately owned lands may be designated 'National Recreation Trails' by the appropriate Secretary with the written consent of the owner of the property involved.".

SEC. 205. (a) Section 5(a) of the National Trails System Act is amended by adding at the end thereof the following:

"(11) The Potomac Heritage National Scenic Trail, a corridor of approximately seven hundred and four miles following the route as generally depicted on the map identified as 'National Trails System, Proposed Potomac Heritage Trail' in 'The Potomac Heritage Trail', a report prepared by the Department of the Interior and dated December 1974, except that no designation of the trail shall be made in the State of West Virginia. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Potomac Heritage Trail. The Secretary of the Interior may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of the Interior.

"(12) The Natchez Trace National Scenic Trail, a trail system of approximately six hundred and ninety-four miles extending from Nashville, Tennessee, to Natchez, Mississippi, as depicted on the map entitled 'Concept Plan, Natchez Trace Trails Study' in 'The Natchez Trace,' a report prepared by the Department of the Interior and dated August 1979. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

"(13) The Florida National Scenic Trail, a route of approximately thirteen hundred miles extending through the State of Florida as generally depicted in 'The Florida Trail', a national scenic trail study draft report prepared by the Department of the Interior and dated February 1980. The report shall be on file and available for public inspection in the office of the Chief of the Forest Service, Washington, District of Columbia. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Florida Trail except with the consent of the owner thereof. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of Agriculture.".

(b) Section 5(b) of the National Trails System Act is amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting after the second sentence the following: "The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of the trail would be financially feasible.";

(3) by redesignating paragraphs (1) through (10) as subparagraphs (A) through (J);

(4) in paragraph (3)(C) (as so redesignated), by inserting "16" before "U.S.C.";

(5) in paragraph (3)(I) (as so redesignated), by inserting "and" after the semicolon at the end of the paragraph;

(6) in paragraph (3)(J) (as so redesignated), by striking out "; and" and inserting in lieu thereof a period;

(7) by striking out "(11) to" and inserting in lieu thereof "(4) To"; and

(8) in paragraph (4) (as renumbered by paragraph (9) of this subsection) by inserting "exploration," after "commerce," in the first sentence of subparagraph (B).

(c) Section 5(c) of the National Trails System Act is amended—

(1) in paragraph (9), by striking out "Sante Fe" and inserting in lieu thereof "Santa Fe"; and

(2) by adding after paragraph (23) the following:

"(24) Juan Bautista de Anza Trail, following the overland route taken by Juan Bautista de Anza in connection with his travels from the United Mexican States to San Francisco, California.

"(25) Trail of Tears, including the associated forts and specifically, Fort Mitchell, Alabama, and historic properties, extending from the vicinity of Murphy, North Carolina, through Georgia, Alabama, Tennessee, Kentucky, Illinois, Missouri, and Arkansas, to the vicinity of Tahlequah, Oklahoma.

"(26) Illinois Trail, extending from the Lewis and Clark Trail at Wood River, Illinois, to the Chicago Portage National Historic Site, generally following the Illinois River and the Illinois and Michigan Canal.

"(27) Jedediah Smith Trail, to include the routes of the explorations led by Jedediah Smith—

"(A) during the period 1826–1827, extending from the Idaho-Wyoming border, through the Great Salt Lake, Sevier, Virgin, and Colorado River Valleys, and the Mojave Desert, to the San Gabriel Mission, California; thence through the Tehachapi Mountains, San Joaquin and Stanislaus River Valleys, Ebbetts Pass, Walker River Valley, Bald Mount, Mount Grafton, and Great Salt Lake to Bear Lake, Utah; and

"(B) during 1828, extending from the Sacramento and Trinity River Valleys along the Pacific coastline, through the Smith and Willamette River Valleys to the Fort Vancouver National Historic Site, Washington, on the Columbia River.

"(28) General Crook Trail, extending from Prescott, Arizona, across the Mogollon Rim to Fort Apache.

"(29) Beale Wagon Road, extending along United States Highway 66 (Interstate 40) through Arizona.".

(d) Section 5(d) of the National Trails System Act is amended—

(1) by inserting after the first sentence the following: "If the appropriate Secretary is unable to establish

such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress."; and

(2) by redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively, and by amending paragraph (1) (as so redesignated) to read as follows:

"(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;".

(e) Section 5(f) of the National Trails System Act is amended—

(1) in paragraph (1), by striking out "national recreational" and inserting in lieu thereof "national historic", and by striking out "and" after the semicolon;

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(3) a protection plan for any high potential historic sites or high potential route segments; and

"(4) general and site-specific development plans, including anticipated costs.".

SEC. 206. Section 6 of the National Trails System Act is amended—

(1) in the first sentence, by inserting "by the appropriate Secretary" after "marked"; and

(2) by striking out ": *Provided*" and all that follows through the period and inserting in lieu thereof the following: ", or, where the Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary.".

SEC. 207. (a) Section 7 of the National Trails System Act is amended—

(1) by striking out "SEC. 7. (a)" and inserting in lieu thereof "(2)"; and

(2) by inserting the following immediately after the section heading:

"SEC. 7. (a)(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 5(a) shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this Act shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the

Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

"(B) The Secretary charged with the overall administration of any trail pursuant to section 5(a) may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this Act. During any period in which managment responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide.";

(3) in the first sentence of paragraph (2) of this subsection (a) (as redesignated by paragraph (1) of this subsection), by striking out "thereof", and inserting in lieu thereof "of the availability of appropriate maps or descriptions", and striking out ", together with appropriate maps and descriptions"; and

(4) in the second sentence of such paragraph (2) of subsection (a), by inserting before the period "consistent with the purpose of this Act".

(b) Section 7(b) is amended—

(1) by inserting "of the availability of appropriate maps or descriptions" after "notice"; and

(2) by striking out "together with appropriate maps and descriptions,".

(c) Section 7(c) is amended by adding at the end thereof the following: "The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.".

(d) Section 7(f) of the National Trails System Act is amended by inserting "(1)" after "(f)" and by adding at the end thereof the following:

"(2) When a tract of land lies partly within and partly without a national scenic or national historic trail right-of-way, the appropriate Secretary may, with the consent of the owner thereof, acquire the entire tract. Land so acquired outside the right-of-way may be exchanged for non-Federal land within such right-of-way, and any portion of the land not used for such exchanges may be disposed of in accordance with the provisions of section 5 of Public Law 90–401. The proceeds from any such disposal shall be credited to the appropriation account bearing the cost of land acquisition for the affected trail right-of-way.".

(e) Section 7(g) of the National Trails System Act is amended in the last sentence by striking out "No" and inserting in lieu thereof "Except for designated protected components of the trail, no".

(f) Section 7(h) of the National Trails System Act is amended—

(1) by inserting "(1)" after "(h)";

(2) in the second sentence, by striking out "a national scenic or national historic trail" and inserting in lieu thereof "such a trail";

(3) by inserting after the second sentence the following: "Such agreements may include provisions for limited financial assistance to encourage participation in the operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with the Volunteers in the Parks Act of 1969 and the Volunteers in the Forests Act of 1972) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. Such Secretary shall also initiate consultations with affected States and their political subdivisions to encourage—

"(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

"(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this Act,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection."; and

(4) by striking out "Whenever the" in the last sentence of such subsection and inserting in lieu thereof the following:

"(2) Whenever the".

(g) Section 7(i) of the National Trails System Act is amended by adding at the end thereof the following new sentence: "The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.".

(h) Section 7 of the National Trails System Act is amended by inserting after subsection (i) the following:

"(j) Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this Act or other Federal laws, or any State or local laws.

"(k) For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code of 1954, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located.".

Sec. 208. Section 8 of the National Trails System Act is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interm use of any established railroad rights-of-way pursuant to donation, tranfer, lease, sale, or otherwise in a manner consistent with the National Trails System Act, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such tranfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interm use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.".

SEC. 209. Section 10 of the National Trails System Act is amended—

(1) by inserting "(a)(1)" after "SEC. 10.";

(2) by striking out "(a) The" in the second sentence and inserting in lieu thereof "for the";

(3) by striking out "It is the express intent" and inserting in lieu thereof the following:

"(2) It is the express intent";

(4) in subsection (a)(2) (as designated by paragraph (3) of this subsection), by inserting "Appalachian" before "Trail"; and

(5) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) by inserting before the period at the end of paragraph (1) (as designated by subparagraph

(A) of this paragraph) ", except that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation site, as described in section 7(c), along with such trail in each State crossed by the trail"; and

(C) by adding at the end of each such subsection the following:

"(2) There is hereby authorized to be appropriated for fiscal year 1983 and subsequent fiscal years such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs (9) through (13) of section 5(a) of this Act. Not more than $500,000 may be appropriated for the purposes of acquisition of land and interests therein for the trail designated by section 5(a)(12) of this Act, and not more than $2,000,000 may be appropriated for the purposes of the development of such trail. The administering agency for the trail shall encourage volunteer trail groups to participate in the development of the trail.".

SEC. 210. The National Trails System Act is amended by adding the following new sections at the end thereof:

"VOLUNTEER TRAILS ASSISTANCE

"SEC. 11. (a)(1) In addition to the cooperative agreement and other authorities contained in this Act, the Secretary of the Interior and the Secretary of Agriculture are authorized to encourage volunteers and volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

"(2) Wherever appropriate in futherance of the purposes of this Act, the Secretaries are authorized and encouraged to utilize the Volunteers in the Parks Act of 1969, the Volunteers in the Forests Act of 1972, and section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

"(b) Each Secretary may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to—

"(1) planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; or

"(2) operating programs to organize and supervise volunteer trail building efforts with repect to the trails referred to in paragraph (1), conducing trail-related research projects, or providing eduction and training to volunteers on methods of trails planning, construction, and maintenance.

"(c) The appropriate Secretary may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary deems necessary or desirable.

"SEC. 12. As used in this Act:

"(1) The term 'high potential historic sites' means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

"(2) The term 'high potential route segments' means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route.

"(3) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the

Pacific Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

"(4) The term 'without expense to the United States' means that no funds may be expended by Federal agencies for the development of trail related facilities or for the acquisition of lands or interests in lands outside the exterior boundaries of Federal areas. For the purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Fund Act of 1965 or any other provision of law shall not be treated as an expense to the United States.".

SEC. 211. Section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601–6a) is amended at the end of the first paragraph by adding the following new sentences: "Notwithstanding any other provision of law, no Federal fee shall be imposed for entrance or admission to any national recreation area, any unit of the National Wild and Scenic Rivers System, or any unit of the National Trails System. Notwithstanding any other provision of law, effective June 1, 1981, no Federal fee shall continue to be imposed for entrance or admission to any unit of the National Park System at which the cost of collection of such fee exceeded the receipts collected in calendar year 1979 (as determined by the National Park Service report entitled

'Report of Entrance Fee Rates, Collections and Costs to Collect CY 1979' and dated May 13, 1980): Provided, That if the Secretary of the Interior, prior to April 1, 1981, makes a specific determination that fee collection will be reasonably necessary to protect park resources in an individual unit affected by this sentence, the Secretary may continue an entrance fee at that unit after providing notice of his intention to do so to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate.".

TITLE III—DESIGNATION OF THE "BIZZ JOHNSON TRAIL"

SEC. 301. The Congress finds that Harold T. "Bizz" Johnson, for twenty-two years a United States Representative from the State of California, should be afforded recognition for his deep appreciation and respect for the mountains, forests, rivers, and fertile valleys of northern California, and for his sustained efforts to protect areas especially suited to outdoor recreation and the enjoyment of nature, and to assure public access thereto. Bizz Johnson took an early and leading interest in proposals to convert an abandoned railroad right-of-way in Lassen County to a twenty-five-mile trail to provide access to the undeveloped Susan River Canyon in the Sierra Nevada Mountains for hikers, horseback riders, cross-country skiers, handicapped individuals, and others. As Representative for the First Congressional District he worked with, and provided major assistance to, local groups, officials of the city of Susanville and the county of Lassen, the Bureau of Land Management, the Forest Service, and the Trust for Public Land in implementing plans for the project.

SEC. 302. The Susanville-Westwood Rails to Trails project described in a joint Bureau of Land Management/Forest Service Recreation Land Acquisition Composite, converting an abandoned railbed in Lassen County, California, extending from the county seat in Susanville westward twenty-five miles to Mason Junction, four miles from the community of Westwood, and traversing the Susan River Canyon, to a public recreation trail is hereby designated and hereafter shall be known as the "Bizz Johnson Trail". Any law, regulation, record, map, or other document of the United States referring to this trail shall be held to refer to the "Bizz Johnson Trail", and any future regulations, records, maps, or other documents of the United States, in reference to this trail, shall bear the name "Bizz Johnson Trail".

SEC. 303. The Secretary of the Interior is authorized and directed, in cooperation with the city of Susanville and the county of Lassen, State of California, to design and erect at a suitable location along the Bizz Johnson Trail an appropriate marker in commemoration of the outstanding contributions of Harold T. "Bizz" Johnson toward the protection of undeveloped scenic areas of northern California for the use and enjoyment of the American people, in perpetuity.

SEC. 304. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE IV—ROY TAYLOR FOREST

SEC. 401. The Congress finds and declares that Roy Taylor, for sixteen years a United States Representative from the State of North Carolina, a member of the Committee on Interior and Insular Affairs, and chairman of the Subcommittee on National Parks and Recreation, should be afforded recognition for his deep appreciation, affection and respect for the mountains, forests, and streams of western North Carolina, and for his sustained efforts to protect areas especially suited to outdoor recreation and the enjoyment of nature, and to assure public access thereto.

SEC. 402. The thirty-nine thousand acres of forested mountain land within the Nantahala National Forest in Jackson County, North Carolina, commonly referred to as the Balsam-Bonas Defeat area, are hereby designated and hereafter shall be known as the "Roy Taylor Forest". Any law, regulation, record, map, or other document of the United States referring to this land shall be held to refer to the "Roy Taylor Forest", and any future regulations, records, maps, or other documents of the United States, in reference to this area of the Nantahala National Forest, shall bear the name "Roy Taylor Forest".

SEC. 403. The Secretary of Agriculture is authorized and directed, in cooperation with the county of Jackson, State of North Carolina, to design and erect at a suitable location in the Roy Taylor Forest area an appropriate marker in commemoration of the outstanding contributions of Roy Taylor toward the protection of public lands in western North Carolina and the Nation for the use and enjoyment of the American people.

SEC. 404. The Secretary of the Interior is authorized and directed to make designations regarding the Roy Taylor Forest area in publications produced for the Blue Ridge Parkway. The Secretary is further authorized to erect appropriate signs at a suitable location on the Blue Ridge Parkway to commemorate the contributions of Roy Taylor and the designation of the forest area authorized in this title.

SEC. 405. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

Passed the House of Representatives May 11, 1982.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

II

97TH CONGRESS
1ST SESSION

S. 894

To exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 16), 1981

Mr. CANNON (for himself, Mr. LAXALT, Mr. ANDREWS, and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 504(g) of the Federal Land Policy and Management Act of 1976 is amended by—

(1) inserting "(1)" after "(g)"; and

(2) adding at the end thereof the following new paragraph:

"(2) The provisions of paragraph (1) shall not apply to rural electric cooperatives or to rural telephone cooperatives.".

○

Senator **Wallop**. I have statements for the record on H.R. 861 from Senators Humphrey and Bumpers and on S. 894 from Senators Cannon, Baucus, and Schmitt. They will be placed in the record at this point.

[The statements referred to follow:]

Mr. Chairman,

I would like to take this opportunity to express my support for H.R. 861, a bill which amends the National Trails System Act. This bill was recently adopted in the House by a vote of 389 to 6, and I am hopeful that the Senate will support the House position.

Perhaps the key feature of H.R. 861 is its encouragement of volunteers to become more involved in the planning and development of our National Trails System. In all areas of the trail system, volunteers play an invaluable role in its maintenance and preservation. In New Hampshire, volunteer management has been a fundemental characteristic of the Appalachian Trail project for over fifty years. It has been estimated that on the national level, volunteers involved in construction and maintenance programs alone have resulted in savings in excess of $1 million annually to public agencies. Other volunteer activities include shelter and bridge construction, caretaker and ridgerunner programs, and visitor education services.

However, some volunteer activities have been hampered by the inadequacy or complete lack of necessary equipment and tools. H.R. 861 would address this problem by expanding the authority of the Secretary to provide technical and financial assistance, and to permit the use of federal facilities and equipment by volunteers who participate in trail management activities.

Another important provision of H.R. 861 allows for the purchase of whole tracts of land in acquiring rights-of-way and permits the sale of unneeded remnants. Currently, the proceeds of such sale go into the Land and Water Conservation Fund; H.R. 861 would allow these proceeds to be directly recycled for the continued acquisition of needed trail rights-of-way. This allows for greater flexibility in land acquisition negotiations and more effective use of available appropriations.

Our current economic situation compels Congress to evaluate all proposed legislation in light of both its cost and benefits. For the reasons stated above, I believe that the enactment of H.R. 861 will greatly improve our National Trails System at a very minimal cost to the Federal Government.

STATEMENT OF SENATOR BUMPERS
ON H.R. 861

Mr. Chairman, I want to begin by expressing my appreciation to you for scheduling this hearing today on H.R. 861--a bill to amend the National Trails System Act.

As you know, Mr. Chairman, this is a bill that we spent a good deal of time on last Congress in the Parks, Recreation, and Renewable Resources Subcommittee. While we were unable to secure passage of an identical measure in both bodies, both the Senate and the House enacted very similar versions of this legislation at different times during the 96th Congress.

The bill before the Subcommittee today is very similar to the version that passed the Senate last Congress. If enacted, this measure would amend the National Trails System Act of 1968 by (1) identifying several new trail routes for study purposes; (2) designating several new trail routes for inclusion in the System; (3) making a number of clarifying and technical changes in the basic Act; and (4) encouraging and assisting volunteer citizen involvement in the advancement of the Nation's trail development program.

I am especially interested in the provisions of H.R. 861 which are included in an effort to encourage volunteer efforts by trail users themselves. Through such a program, I am convinced that a great deal of constructive and worthwhile work can be accomplished at low cost.

Mr. Chairman, this measure enjoys broad support; and I hope that the Committee and the Senate can act on this measure before the end of this Congress.

STATEMENT OF SEN. HOWARD W. CANNON
Subcommittee on Public Lands and Reserved Water
August 4, 1982

Mr. Chairman:

I appreciate this opportunity to submit for the record my strong support for passage of this bill, S. 894, to provide an exemption from the right-of-way payment requirements on public lands for rural electric and telephone cooperatives.

Title V of the Federal Land Policy and Management Act of 1976 establishes a policy for securing a fair market value for rights of way over the public lands. The Bureau of Land Management has begun implementation of this policy by imposing both an initial installation fee and an annual rental.

While I cannot argue with the policy in most situations, I believe a strong case can be made for an exemption in the case of rural electric and telephone cooperatives. The right of way charge subverts another important public policy, that of providing essential services to all citizens.

Rural electric and rural telephone cooperatives provide a most important service in the sparsely populated and remote corners of this nation. Typically in the West, these cooperatives must cross the public lands to provide this service. Also typical is the fact that the cooperatives have long powerline requirements and small market areas. These lines are the major overhead cost to the cooperative. Anything which substantially increases these costs, particularly on an annual basis, imposes new paperwork burdens on the cooperatives and adds to the power and telephone costs for the customer of these cooperatives. Power customers already pay rates 12 percent higher, on a nationwide average, than customers of investor owned utilities.

A comparison of cooperative and investor-owned power utilities is instructive. Investor-owned utilities average about 35 to 36 customers per mile of power line while a cooperative averages only about 4.5 customers per mile of line. Investor-owned utilities generate revenues of about $36,600 per mile while cooperatives average less than $3,000 in revenues per mile. The rural power consumer is already at a disadvantage, without the addition of more overhead for the utilities bringing in the power.

The figures for rural telephone cooperatives are similar to those for the power cooperatives.

It is not good public policy to place the rural power and telephone customer at a severe rate disadvantage and the rural cooperative under a burden not shared by its investor-owned counterparts. The rural customer already helps pay for the management of the Federal lands through the taxes he or she pays but will be required to pay again through higher power rates for the right-of-way charges to the cooperation, which must realistically be passed on to him.

I believe the right-of-way charges are contrary to good public policy and believe it makes sense to provide this exemption. I hope the Committee will agree.

FYR

United States Senate

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(202) 224-2651

Montana Toll Free No.
(1) 800-332-6106

1982 AUG 10 AM 12:

August 3, 1982

Honorable Malcolm Wallop
Chairman, Senate Energy and
Natural Resources Subcommittee
on Public Lands and Reserved Water
United States Senate
Washington, D.C. 20510

Dear ~~Senator Wallop~~: Malcolm,

I write in support of legislation that would repeal federal rights-of-way fees for rural electric cooperatives. I understand your Subcommittee is holding hearings concerning S. 894 that would accomplish this goal, and I certainly encourage the Subcommittee's work in this area.

As I am sure you are aware, rural electric cooperatives have recently been hit with a number of setbacks that will make bringing electric service to rural areas more difficult and more expensive. That the federal government would at this time reverse its traditional policy of not charging for electric cooperative rights-of-way is, therefore, particularly inappropriate. I have corresponded with the Administration urging a reversal of this new policy and have been informed in return that the decision to impose such fees will not be administratively reversed. Accordingly, legislation would seem to be the appropriate remedy.

I would appreciate your making this letter a part of the Subcommittee's record, and I certainly appreciate the Subcommittee's consideration of this problem.

With best personal regards, I am

Sincerely,

Max

cc: Honorable Dale Bumpers,
Ranking Minority Member

Committees

Environment and
Public Works
Finance
Judiciary
Small Business

Billings
657-6790

Bozeman
586-6104

Butte
782-8700

Great Falls
761-1574

Helena
~~449-5480~~

Missoula
728-2043

STATEMENT OF
SENATOR HARRISON H. SCHMITT

Mr. Chairman, I want to express my appreciation for your effort to schedule a hearing on S. 894, a bill to exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act (FLPMA). Knowing as I do of the many pressing legislative issues currently before your Committee, your special attention to this matter has even greater significance for those of us who support this bill.

I tackling public lands legislation in 1976 the Congress faced a formidable task. More than 3,000 public land laws were on the books: each enacted as the need arose without an overall, coherent national policy. In order to weed out the obsolete and inapplicable laws and provide clear guidance for administration, management, protection and development of the public lands, Congress passed FLPMA.

I underscore the magnitude of the task because I believe it pertains to the bill under consideration today in two ways. First, in spite of the scope of this massive legislative undertaking, the Congress gave specific direction to the Department of the Interior and the Forest Service on the treatment of nonprofit corporations like the rural electric cooperatives regarding right-of-way charges. Second, the conditions which historically led to a public policy that imposed no charge on rural electric cooperatives, and which were recognized in FLPMA, are as valid today as they were in the past.

Rural electric cooperatives provide an important service in New Mexico and elsewhere in the nation where sparsely populated and remote locations are bounded by vast areas of public land. To provide service in these remote locations, the cooperatives must cross the public lands. The result is typically long powerline requirements and very small market areas. The burden of this costly service is borne by the customer, which currently pays rates 12 percent higher than customers of investor-owned utilities. Investor-owned utilities generate about $36,000 of revenues per mile while cooperatives generate less than $3,000 per mile.

The rural customer bears the added costs imposed by the Department of the Interior and the Forest Service. This cost places the rural customer at an even greater rate disadvantage than his less remote counterpart, and calls into question whether public policy established under FLPMA is properly reflected in the implementing regulations. I believe that the Department of the Interior and the Forest Service have missed the target on this particular matter, and I urge this Committee to instruct those agencies on their aim through favorable consideration of this legislation.

Again, I thank you for your cooperation in holding hearings on this measure and also for your courtesy in extending me this opportunity to express my views.

Senator WALLOP. The first witnesses are Gary Cargill, Associate Deputy Chief, National Forest Systems, U.S. Forest Service, Department of Agriculture and Mary Lou Grier, Deputy Director of the National Park Service, Department of the Interior.

Would you begin please.

STATEMENT OF GARY E. CARGILL, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. CARGILL. Mr. Chairman, we appreciate the opportunity to appear before the committee. We have submitted the written statement and if you would like, I can summarize for the economy of time.

Senator WALLOP. Yes, by all means.

Mr. CARGILL. We support passage of the act as amended to delete section 211. H.R. 861 would amend the National Trails System Act by designating three scenic trails as components of the National Trails System and by designating six additional trail routes for study.

The bill makes several amendments designed to improve the effectiveness and efficiency of on-the-ground administration; amend the Land and Water Conservation Fund Act regarding the collection of recreation fees; designates the Bizz Johnson Trail in Lassen County, Calif., and designates a portion of the Nantahala National Forest in North Carolina as the Roy Taylor Forest.

The Forest Service administers over 100,000 miles of recreational trails which include several components of the National Trails System. There are 5,000 miles of national scenic trails, 215 miles of national historic trails, and 4,362 miles of national recreation trails administered by the Forest Service within the national forest system boundaries.

The study reports have been prepared for three trails proposed for designation in the bill, but only the Florida Trail involves lands administered by the Forest Service. The Potomac Heritage Trail and the Natchez Trace Trail affect lands administered by the Department of the Interior and we defer to their recommendation on these trails.

The study report for the proposed Florida Trail concludes that the trail meets the criteria for designation as a national scenic trail. We support designation of the Florida National Scenic Trail and recommend it be administered by the Secretary of Agriculture.

The bill proposes six new trails for study as potential additions to the National Trails System. Proposed studies of the Juan Bautista de Anza Trail, the Jedediah Smith Trail, and the Trail of Tears could involve limited amounts of national forest system lands, but would primarily affect lands administered by the Department of the Interior.

Studies of these trails and the Illinois Trail, which affect lands administered by the Department of the Interior should be conducted by the Secretary of the Interior in cooperation with this Department.

The proposed General Crook Trail extends approximately 360 miles from Prescott, Ariz., to Fort Craig, N. Mex. One hundred thirty-eight miles of the proposed trail traverse the Prescott, Apache Sitgreaves, and Coconino National Forests. We support its study by the Secretary of Agriculture.

The Beale Wagon Road was commissioned for survey in 1857 and traverses the State of Arizona from Fort Defiance to the Colorado River, a distance of approximately 370 miles. Approximately 20 percent of the proposed trail is within the boundaries of the Kaibab and Coconino National Forests.

A study of the Kaibab National Forest portion of the trail has been completed and we would be willing to complete study of the remaining portion of the trail on the national forest system under existing land management planning authorities. The major portion of the trail, approximately 80 percent, is on private land, Indian reservation and other public lands. The study responsibility for these portions of the trail should be within the Department of the Interior to which we defer for a position on such a study requirement.

The technical amendments to the National System Trails Act provided by H.R. 861 would improve the effectiveness and efficiency of our administration.

We particularly favor those provisions of the bill that would enhance volunteer support and maintenance of trails. It is important to note that other agencies, such as the Tennessee Valley Authority and the Bureau of Land Management should be provided the authority to use volunteers. We suggest the bill be amended to provide such authority.

Section 207(f)(3) enhances the scope and utility of cooperative agreements to promote use of volunteers in the operation, development or maintenance of trails. This and other amendments in H.R. 861 related to encouraging and assisting volunteers to participate in trail development and management would be of great assistance in meeting our goals.

The proposal for a National Trails System plan to be revised at the beginning of each odd numbered year could provide a periodic assessment of the progress of the National Trails System. However, since the Department of the Interior is responsible for development of the plan, we defer to the views of the Department of the Interior.

Section 207(a) provides the opportunity for the Secretary charged with overall administration of a trail to transfer management to another Secretary through a memorandum of agreement. This would promote management efficiency between Federal agencies.

Section 207(a)(3) would result in significant cost savings for Federal agencies while still providing adequate public information on trail routes.

Section 207(d) allows for the purchase of whole tracts in acquiring rights-of-way, thereby, facilitating negotiations with landowners and avoiding severance damages. Portions of a tract not necessary for the protection of a trail may be exchanged or disposed of under the appropriate authorities and proceeds from such disposals shall be credited to the land acquisition account for the affected trail. This provision would promote overall cost saving incentives in acquiring rights-of-way.

It is important that the lease- and sell-back authority of section 5 of Public Law 90-401 be available to the Secretary of Agriculture.

The present wording of section 207(d) of H.R. 861 refers to the appropriate Secretary, but we request this authority in the Secretary of Agriculture be made more express. We propose a clarifying amendment to section 207(d) which is encluded in our formal statement.

Section 207(j) would allow for additional trail uses on designated components of the National Trails System, thereby, making the system accessible to a wider segment of the public. We think it is timely to consider the use of selected trails for other than hiking and horse riding.

Section 207(k) allows for the donation of various types of conservation easements, including easements in gross, and would be a logical adjunct to that provision in the Temporary Tax Provisions, Extension Act of 1980, Public Law 96-541, which permits a tax deduction for the donation of easements.

Section 211 amends the Land and Water Conservation Fund Act of 1965 by restricting the charging of entrance or admission fees at National Recreation Areas and singles out units of the National Wild and Scenic Rivers System and National Trails System as being ineligible for collection of entrance or admission fees. We do not believe it is appropriate to further restrict the capability to collect recreation user fees. The Forest Service is looking at the recreation fee system and studying an overall approach which may lead to recommended changes in the future. We strongly recommend that section 211 not be included in the legislation.

Title III provides for designation of the Bizz Johnson Trail in recognition of the former Congressman's efforts to protect areas for outdoor recreation. Much of the trail is on national forest system land and we have no objection to this designation.

Title IV provides for designating 39,000 acres of the Nantahala National Forest as the Roy Taylor Forest in recognition of that former Congressman's efforts to provide outdoor recreation areas. We have no objection to this designation.

Mr. Chairman, this concludes my remarks. I would be pleased to answer questions you may have or furnish additional details.

[The prepared statement of Mr. Cargill follows:]

STATEMENT OF
GARY E. CARGILL, ASSOCIATE DEPUTY CHIEF
NATIONAL FOREST SYSTEM
U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Before the
Subcommittee on Public Lands and Reserved Water
of the
Committee on Energy and Natural Resources
United States Senate

Concerning H.R. 861 to amend the National Trails System Act by designating additional National Scenic and Historic Trails, and for other purposes.

August 4, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

We appreciate the opportunity to appear before the committee to comment on H.R. 861. We support passage of the Act, if amended to delete Section 211.

H.R. 861 would amend the National Trails System Act by designating three scenic trails as components of the National Trails System and by designating six additional trail routes for study. The bill further amends the National Trails System Act by making several amendments designed to improve the effectiveness and efficiency of on-the-ground administration; amends the Land and Water Conservation Fund Act regarding the collection of recreation fees; designates the "Bizz Johnson Trail" in Lassen County, California; and designates a portion of the Nantahala National Forest in North Carolina as the "Roy Taylor Forest."

Recreation trails provide high quality recreation opportunities on public lands. The Forest Service administers over 100,000 miles of recreational trails which include several components of the National Trails System. We have general responsibility for administration of the Pacific Crest and Continental Divide National Scenic Trails, cooperate with the National Park Service and the Bureau of Land Management in the management and study of several other trails, and have designated and administer 346 National Recreation Trails. In total, there are 5,000 miles of National Scenic Trails, 215 miles of National Historic Trails and 4,362 miles of National Recreation Trails administered by the Forest Service within National Forest System boundaries.

H.R. 861 would further enhance the Forest Service involvement in the administration and study of existing or potential components of the National Trails System. Study reports have been prepared for the three trails proposed for designation in the bill, but only the Florida Trail involves lands administered by the Forest Service. The Potomac Heritage Trail and the Natchez Trace Trail affect lands administered by the Department of the Interior, and we defer to their recommendation on these trails.

The study report for the proposed Florida Trail concludes that the trail meets the criteria for designation as a National Scenic Trail. One hundred thirty-two miles of this trail have been completed by the Forest Service and are presently in use on the National Forests in Florida. We support designation of the Florida National Scenic Trail and recommend it be administered by the Secretary of Agriculture.

The bill proposes six new trails for study as potential additions to the National Trails System: the Juan Bautista de Anza Trail, Trail of Tears, Illinois Trail, Jedediah Smith Trail, General Crook Trail and Beale Wagon Road. The proposed studies of the Juan Bautista de Anza Trail, Jedediah Smith Trail, and Trail of

Tears could involve limited amounts of National Forest System lands, but would primarily affect lands administered by the Department of the Interior. Studies of these trails and the Illinois Trail, which affect lands administered by USDI should be conducted by the Secretary of the Interior in cooperation with this Department.

The proposed General Crook Trail extends approximately 360 miles from Prescott, Arizona, to Fort Craig, New Mexico. One hundred thirty eight miles of the proposed trail traverse the Prescott, Apache-Sitgreaves and Coconino National Forests. We support its study by the Secretary of Agriculture.

The Beale Wagon Road was commissioned for survey in 1857 and traverses the State of Arizona from Fort Defiance to the Colorado River, a distance of approximately 370 miles. Approximately 20 percent of the proposed trail is within the boundaries of the Kaibab and Coconino National Forests. A study of the Kaibab National Forest portion of the trail has been completed, and we would be willing to complete study of the remaining portion of the trail on the National Forest System under existing land management planning authorities. The major portion of the trail, approximately 80 percent, is on private land, Indian Reservation, and other public lands. The study responsibility for these portions of the trail should be with the Department of the Interior, to which we defer for a position on such a study requirement.

The Forest Service manages a significant portion of the National Trails System and the technical amendments to the National Trails System Act, provided by H.R. 861, would improve the effectiveness and efficiency of our administration. We particularly favor those provisions of the bill that would enhance volunteer support and maintenance of trails. The vital role of volunteers in the support and maintenance of the Appalachian Trail is well known. Volunteers also make major contributions to other trails on the National Forests. It is important to note that other agencies such as the Tennessee Valley Authority and the Bureau of Land Managment, should be provided the authority to use volunteers. We suggest the bill be amended to provide such authority by inserting the following words in Section 11:

> Page 19, line 25 - after the words "Secretary of Agriculture" insert the words "or the Head of any Federal Agency administering Federal lands".
>
> Page 20, line 11 - after the word "Secretary" insert the words "or Federal Agency Head".
>
> Page 21, line 1 - after the word "Secretary" insert the words "or Federal Agency Head" - line 5 after the word "Secretary" insert the words "or Federal Agency Head".

In 1981, volunteers maintained 3,495 miles of National Forest trails and overall contributed work valued at $900,000. Our goal is to triple volunteer paticipation in fiscal year 1983. In this regard, section 207(f)(3) enhances the scope and utility of cooperative agreements to promote use of volunteers in the operation, development, or maintenance of trails. This and other amendments in H.R. 861 related to encouraging and assisting volunteers to participate in trail development and management, would be of great assistance in meeting this goal.

The proposal for a National Trails System plan to be revised at the beginning of each odd numbered year could provide a periodic assessment of the progress of the National Trails System. Since the Secretary of the Interior is responsible for development of the plan, we defer to the views of the Department of the Interior.

Section 207(a)(2) provides the opportunity for the Secretary charged with overall administration of a trail to transfer management of specified segments of the trail to another Secretary through a memorandum of agreement. This would promote management efficiency between Federal agencies.

Section 207(a)(3) provides that the agency responsible for a component of the National Trails System have maps or descriptions available for public inspection rather than publishing them in the Federal Register. This amendment would result in significant cost savings for Federal agencies while still providing adequate public information on trail routes.

Section 207(d) allows for the purchase of whole tracts in acquiring rights-of-way, thereby, facilitating negotiations with landowners and avoiding severance damages. Portions of a tract not necessary for the protection of a trail may be exchanged or disposed of under the appropriate authorities and proceeds from such disposals shall be credited to the land acquisition account for the affected trail. This provision would promote overall cost saving incentives in acquiring rights-of-way. It is important that the lease and sell back authority of Section 5 of Public Law 90-401 be available to the Secretary of Agriculture. The present wording of Section 207(d) of H.R. 861 refers to the "appropriate Secretary," but we request this authority in the Secretary of Agriculture be made more express. We propose the following clarifying amendment to Section 207(d).

Page 13, lines 24-25:

Delete the words "of in accordance with the provisions" and substitute in lieu thereof the words "by the appropriate Secretary utilizing the procedures"

Section 207(j) allows for additional trail uses on designated components of the National Trails System thereby making the system accessible to a wider segment of the public. We think it is timely to consider the use of selected trails for other than hiking and horse riding.

Section 207(k) would provide inducement to encourage private landowners to donate property for protection of trails and should result in some cost savings to the Federal Government. This provision allows for the donation of various types of conservation easements, including easements in gross, and would be a logical adjunct to that provision in the Temporary Tax Provisions, Extension Act of 1980, (P.L. 96-541) which permits a tax deduction for the donation of easements. This provision supports our interpretation of section 6 of P.L. 96-541 that the donation of interests in land within or near a component of the National Trails System, or Federal park or forest through which a trail passes, is in furtherance of a Federal conservation policy and yields a significant public benefit.

Section 211 amends the Land and Water Conservation Fund Act of 1965 by restricting the charging of entrance or admission fees at National Recreation Areas, and singles out units of the National Wild and Scenic Rivers System and National Trails System as being ineligible for collection of entrance or admission fees. We do not believe it is appropriate to further restrict the capability to collect recreation user fees. The Forest Service is looking at the recreation fee system and studying an overall approach which may lead to recommended changes in the future. We strongly recommend that Section 211 not be included in the legislation .

Title III provides for designation of the "Bizz Johnson Trail" in recognition of the former Congressman's efforts to protect areas for outdoor recreation. Much of the trail is on National Forest land, and we have no objection to this designation.

Title IV provides for designating 39,000 acres of the Nantahala National Forest as the "Roy Taylor Forest" in recognition of the former Congressman's efforts to provide outdoor recreation areas. We have no objection to this designation.

Mr. Chairman, this concludes my remarks. I would be pleased to answer questions you may have or furnish additional details.

Senator WALLOP. Thank you, Mr. Cargill.
Ms. Grier.

STATEMENT OF MARY LOU GRIER, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Ms. GRIER. Thank you, Mr. Chairman. I appreciate the opportunity to testify today on behalf of the Department on H.R. 861. The bill designates the Potomac Heritage National Scenic Trail in accordance with a Department of the Interior report of December 1974. No part of the trail in the State of West Virginia, however, is included in the designation. The trail shall only consist of a corridor within the exterior boundaries of federally administered areas such as the C and O Canal National Historical Park. No additional acquisition costs are anticipated.

The Natchez Trace National Scenic Trail would also be designated in accordance with an August 1979 Department of the Interior report. The bill specifically limits appropriations for the Natchez Trace Trail to $500,000 for acquisition and $2 million for development.

Mr. Chairman, both the Potomac Heritage and the Natchez Trace were studied as potential national scenic trails. The studies found them to be qualified for inclusion in the system and we recommend that they be so designated. Since the Potomac Heritage and Natchez Trace Trails will be located almost entirely within the exterior boundaries of existing Federal areas, we do not recommend additional land acquisition for these trails.

As far as the overall bill, H.R. 861, is concerned, Mr. Chairman, we would recommend the enactment of the bill if it is amended to delete section 211. And we also want to recommend certain other amendments.

Back to the six trails for study that are designated by the bill, we would have no objection to these studies if it is clear that they would not be undertaken until funds were appropriated specifically for that purpose. Section 5(b) of the National Trails System Act requires that such studies be completed and submitted to the Congress within 3 fiscal years of their designation for study. In order to meet that deadline, we recommend language indicating that the 3-year period begins with the appropriation of the necessary funds.

In this connection, we estimate the cost of each study will be approximately $150,000. With respect to the proposed General Crook Trail in Arizona, the study would be carried out by the Department of Agriculture since most of the trail route is on or near lands administered by that Department.

With regard to the Beale Wagon Road, we defer to the Department of Agriculture for a position on that section of the trail that is on National Forest System lands. However, we do not recommend that a study be done for those portions of the Beale Wagon Road outside of national forest boundaries.

The original historic road in these segments has largely been obliterated by modern highways and other improvements. Such historic remnants as may be found along the route could be interpreted by markers placed along the highway by the State of Arizona.

Mr. Chairman, as the bill was reported from the House Committee on Interior and Insular Affairs, H.R. 861 included a very desirable amendment to the study provisons of section 5(b) of the National Trails System Act. It established a process for shortcutting long and expensive trail studies where it is determined during a study that trail development is not feasible and there is no significant need for the trail.

By an appropriate report to the House and Senate committees, the study can be terminated unless either committee disapproves within 30 days.

This particular provision was deleted from the bill on the House floor in order to avoid concern over its legislative veto provisions. We believe the idea is sound, that there should be a process for shortcutting studies where a preliminary review of the route indicates clearly that trail development is not feasible.

We recommend that your committee adopt such an amendment but without the legislative veto provisions. It should be sufficient to permit the Secretary to make a determination of infeasibility and to notify the committees, following which he may terminate the study. Each committee through the exercise of its oversight responsibilities could inquire into the basis of the Secretary's determination.

Mr. Chairman, H.R. 861 also makes other generic amendments to the National Trails System Act. To the extent they are definitional and clarifying, such as defining the term "extended trail" in section 3 of the act and new definitions in a new section 12, we have no objection to these amendments. Others, however, are substantive and we feel strongly that some should and some should not be enacted.

With the help of your committee, Mr. Chairman, we have been working to apply a land protection policy to areas funded by the Land and Water Conservation Fund. The thrust of this new policy, which we published in May 1982 following the invaluable workshops last year, which your committee hosted, is the use wherever appropriate of alternatives to fee purchase of land.

To implement this policy some new tools are needed. H.R. 861 contains several provisions that would give the National Park Service and the Forest Service some new tools to apply land protection to units of the National Trails System. We support these provisions wholeheartedly.

You will recall that at this year's workshop, we released reports of certain case studies we had done. These case studies indicated how alternatives to fee simple acquisition could accomplish an appropriate level of protection and at the same time reduce Federal costs.

One such study treated the Appalachian National Scenic Trail, one of the first components designated by Congress as part of the National Trails System. H.R. 861 provides the following tools which our case study indicated would be desirable for application to the Appalachian Trail.

The disposal of remnant lands. The bill authorizes the acquisition of remnants of whole parcels with the owner's consent and the sale of the unneeded remnant. Under existing law, the proceeds of such a sale would go into the Land and Water Conservation Fund.

Under H.R. 861, however, the proceeds shall be credited to the appropriation bearing the cost of land acquisition for the particular trail. Thus, these funds become immediately available without further appropriation for continued acquisition of needed trail rights-of-way.

The tax status of donated interests. The bill states that for Federal tax purposes, donation of less-than-fee interests for trail purposes will satisfy the requirement for conservation purposes. This language will clarify the status of donations of easements within as well as near the trail corridor, thus encouraging cost effective land protection.

We strongly support the foregoing provisions. In addition, we strongly support the provisions in the bill which encourage the use of the volunteers in the parks and volunteers in the national forest programs for trail maintenance and authorize assistance to volunteers with tools and limited financial assistance. Volunteer work is highly cost effective and should be encouraged.

We do note, however, that the Bureau of Land Management manages a significant portion of the National Trails System, but its authority to accept volunteer services for public lands activities under the Federal Land Policy and Management Act of 1976 has been overlooked in H.R. 861.

We recommend that the National Trails System Act be amended to take into account BLM's role in managing those portions of the National Trails System which are on public land.

Although BLM has the authority to accept volunteer services for public lands activities, that authority has some limitations that do not apply to other agencies and that hamper BLM's volunteer program. We recommend that new section 11 of the act be amended by adding a new subsection that would grant authorities for the BLM volunteer program that are comparable to those previously granted for the National Park Service and the U.S. Forest Service.

The proposed amendment would be applicable to all BLM managed public lands, not just those lands on which trails are located. It would enable the BLM to provide these volunteers, either directly or by reimbursement, certain incidentals such as meals and transportation to and from work sites and to protect volunteers from liability and costs incurred from injuries occurring on the job. Proposed language for such an amendment has been provided to the Congress and is reflected in S. 2753.

We also support the authority in the bill to transfer by agreement management responsibility for particular trail segments between agencies, such as the National Park Service and the Forest Service. In addition we have no objection to the provision in the bill authorizing the Secretary of Agriculture to designate national recreation trails provided that such authority is interpreted to apply to trails on Forest Service lands or on private lands within national forests with the consent of the owner. We expect to maintain the close coordination which we now enjoy with the Department of Agriculture to assure that standards for such designations are basically the same.

The bill would add a new subsection to section 8 of the act directing the Secretary of Transportation, the Chairman of the Interstate Commerce Commission and this Department to encourage State and local agencies and private interests to establish appropriate trails. It further encourages the interim use of railbeds by providing that such use, if consistent with the National Trails System Act, will not be treated as the abandonment of a railbed. While we strongly support the objectives of this provision, we defer to the views of the other agencies involved as to its enactment.

We do not recommend, Mr. Chairman, the provision on page 4, lines 1 to 15 of the bill requiring the submission of a National Trails System plan every 2 years to the Congress. We believe the present system whereby certain trails are designated for study is far preferable, in that limited staff and funds can be concentrated on those specific trails which Congress singles out. A nationwide plan every 2 years would of necessity be very general. We have no estimate of the cost of this provision.

Section 211 would amend the Land and Water Conservation Fund Act of 1965 to prohibit entrance fees at national recreation areas, components of the wild and scenic rivers and National Trails Systems or at any unit of the National Park System where the cost of collection exceeds receipts collected in 1979.

We strongly recommend that this section be deleted. Although no entrance fees are now charged at any of the areas that would be affected, the Secretary should have the flexibility to establish such a fee where appropriate to assure that people who benefit from a service pay a greater share of the cost.

Mr. Chairman, with regard to those titles designating the Bizz Johnson Trail and the Roy Taylor Forest, we have no objections to these titles of the bill.

This concludes my prepared remarks and I would be happy to answer any questions. With regard to that portion dealing with the addition of an amendment regarding the Bureau of Land Management, Mr. Roman H. Koenings has an additional statement he would like to provide the committee.

[The prepared statement of Ms. Grier follows:]

STATEMENT OF MARY LOU GRIER, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ON H.R. 861, AN ACT "TO AMEND THE NATIONAL TRAILS SYSTEM ACT BY DESIGNATING ADDITIONAL NATIONAL SCENIC AND HISTORIC TRAILS, AND FOR OTHER PURPOSES."

AUGUST 4, 1982

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF OF THE DEPARTMENT OF THE INTERIOR ON THIS LEGISLATION.

WE RECOMMEND THE ENACTMENT OF H.R. 861, IF AMENDED TO DELETE SECTION 211. WE ALSO RECOMMEND CERTAIN OTHER AMENDMENTS.

AS PASSED BY THE HOUSE OF REPRESENTATIVES ON MAY 11, THE BILL DESIGNATES THREE NEW COMPONENTS OF THE NATIONAL TRAILS SYSTEM AND SIX TRAILS FOR FUTURE STUDY; IT ALSO MAKES SEVERAL TECHNICAL AND SOME IMPORTANT SUBSTANTIVE AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT. IN ADDITION, THE BILL PROHIBITS THE IMPOSITION OF ENTRANCE FEES AT CERTAIN FEDERAL RECREATION AREAS (SEC. 211), DESIGNATES A PUBLIC RECREATION TRAIL ON BLM AND FOREST SERVICE LANDS IN LASSEN COUNTY, CALIFORNIA, AS THE "BIZZ JOHNSON TRAIL" (TITLE III), AND DESIGNATES A PORTION OF THE NANTAHALA NATIONAL FOREST IN JACKSON COUNTY, NORTH CAROLINA, AS THE "ROY TAYLOR FOREST (TITLE IV)." OUR COMMENTS ON THESE PROVISIONS FOLLOW:

SPECIFIC TRAILS

THE BILL DESIGNATES THE POTOMAC HERITAGE NATIONAL SCENIC TRAIL IN ACCORDANCE WITH A DEPARTMENT OF THE INTERIOR REPORT OF DECEMBER 1974. NO PART OF THE TRAIL IN THE STATE OF WEST VIRGINIA, HOWEVER, IS INCLUDED IN THE DESIGNATION. THE TRAIL SHALL ONLY CONSIST OF A CORRIDOR WITHIN THE EXTERIOR BOUNDARIES OF FEDERALLY ADMINISTERED AREAS SUCH AS THE C AND O CANAL NATIONAL HISTORICAL PARK. NO ADDITONAL ACQUISITION COSTS ARE ANTICIPATED.

THE NATCHEZ TRACE NATIONAL SCENIC TRAIL WOULD ALSO BE DESIGNATED, IN ACCORDANCE WITH AN AUGUST 1979 DEPARTMENT OF THE INTERIOR REPORT. THE BILL SPECIFICALLY LIMITS APPROPRIATIONS FOR THE NATCHEZ TRACE TRAIL TO $500,000 FOR ACQUISITION AND $2 MILLION FOR DEVELOPMENT.

MR. CHAIRMAN, BOTH THE POTOMAC HERITAGE AND NATCHEZ TRACE WERE STUDIED AS POTENTIAL NATIONAL SCENIC TRAILS. THE STUDIES FOUND THEM TO BE QUALIFIED FOR INCLUSION IN THE SYSTEM, AND WE RECOMMEND THAT THEY BE SO DESIGNATED. SINCE THE POTOMAC HERTIAGE AND NATCHEZ TRACE TRAILS WILL BE LOCATED ALMOST ENTIRELY WITHIN THE EXTERIOR BOUNDARIES OF EXISTING FEDERAL AREAS, WE DO NOT RECOMMEND ADDITIONAL LAND ACQUISITION FOR THESE TRAILS.

THE BILL ALSO DESIGNATES THE FLORIDA NATIONAL SCENIC TRAIL IN ACCORDANCE WITH A FEBRUARY 1982 DEPARTMENT OF THE INTERIOR REPORT AND FURTHER PROVIDES FOR ADMINISTRATION BY THE SECRETARY OF AGRICULTURE. WE DEFER TO THAT AGENCY AS TO WHETHER THE FLORIDA TRAIL SHOULD BE DESIGNATED AT THIS TIME.

H.R. 861 ALSO DESIGNATES SIX TRAILS FOR STUDY. WE WOULD HAVE NO OBJECTION TO THESE STUDIES IF IT IS CLEAR THAT THEY WOULD NOT BE UNDERTAKEN UNTIL FUNDS WERE APPROPRIATED SPECIFICALLY FOR THAT PURPOSE. SECTION 5(b) OF THE NATIONAL TRAILS SYSTEM ACT REQUIRES THAT SUCH STUDIES BE COMPLETED AND SUBMITTED TO THE CONGRESS WITHIN THREE FISCAL YEARS OF THEIR DESIGNATION FOR STUDY. IN ORDER TO MEET THAT DEADLINE, WE RECOMMEND LANGUAGE INDICATING THAT THE 3-YEAR PERIOD BEGINS WITH THE APPROPRIATION OF THE NECESSARY FUNDS. IN THIS CONNECTION, WE ESTIMATE THE COST OF EACH STUDY TO BE APPROXIMATELY $150,000. WITH RESPECT TO THE PROPOSED GENERAL CROOK TRAIL IN ARIZONA, THE STUDY WOULD BE CARRIED OUT BY

THE DEPARTMENT OF AGRICULTURE SINCE MOST OF THE TRAIL ROUTE IS ON OR NEAR LANDS ADMINISTERED BY THAT DEPARTMENT.

WITH REGARD TO THE BEALE WAGON ROAD, WE DEFER TO THE DEPARTMENT OF AGRICULTURE FOR A POSITION ON THE SECTION OF THE TRAIL THAT IS ON NATIONAL FOREST SYSTEM LANDS. HOWEVER, WE DO RECOMMEND THAT A STUDY BE DONE FOR THOSE PORTIONS OF THE BEALE WAGON ROAD OUTSIDE OF NATIONAL FOREST BOUNDARIES. THE ORIGINAL HISTORIC ROAD IN THESE SEGMENTS HAS LARGELY BEEN OBLITERATED BY MODERN HIGHWAYS AND OTHER IMPROVEMENTS. SUCH HISTORIC REMNANTS AS MAY BE FOUND ALONG THE ROUTE COULD BE INTERPRETED BY MARKERS PLACED ALONG THE HIGHWAY BY THE STATE OF ARIZONA.

MR. CHAIRMAN, AS THE BILL WAS REPORTED FROM THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, H.R. 861 INCLUDED A VERY DESIRABLE AMENDMENT TO THE STUDY PROVISIONS OF SECTION 5(b) OF THE NATIONAL TRAILS SYSTEM ACT. IT ESTABLISHED A PROCESS FOR SHORTCUTTING LONG AND EXPENSIVE TRAIL STUDIES WHERE IT IS DETERMINED DURING A STUDY THAT TRAIL DEVELOPMENT IS NOT FEASIBLE AND THERE IS NO SIGNIFICANT NEED FOR THE TRAIL. BY AN APPROPRIATE REPORT TO THE HOUSE AND SENATE COMMITTEES, THE STUDY CAN BE TERMINATED UNLESS EITHER COMMITTEE DISAPPROVES WITHIN 30 DAYS.

THIS PROVISION WAS DELETED FROM THE BILL ON THE HOUSE FLOOR IN ORDER TO AVOID CONCERN OVER ITS LEGISLATIVE VETO PROVISIONS. WE BELIEVE THE IDEA IS SOUND--THAT THERE SHOULD BE A PROCESS FOR SHORTCUTTING STUDIES WHERE A PRELIMINARY REVIEW OF THE ROUTE INDICATES CLEARLY THAT TRAIL DEVELOPMENT IS NOT FEASIBLE. WE RECOMMEND THAT YOUR COMMITTEE ADOPT SUCH AN AMENDMENT, BUT WITHOUT THE LEGISLATIVE VETO PROVISIONS. IT SHOULD BE SUFFICIENT TO PERMIT THE SECRETARY

TO MAKE A DETERMINATION OF INFEASIBILITY AND NOTIFY THE COMMITTEES, FOLLOWING WHICH HE MAY TERMINATE THE STUDY. EACH COMMITTEE, THROUGH THE EXERCISE OF ITS OVERSIGHT RESPONSIBILITIES, COULD INQUIRE INTO THE BASIS OF THE SECRETARY'S DETERMINATION.

OTHER AMENDMENTS TO NATIONAL TRAILS SYSTEM ACT

MR. CHAIRMAN, H.R. 861 ALSO MAKES OTHER GENERIC AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT. TO THE EXTENT THEY ARE DEFINITIONAL AND CLARIFYING, SUCH AS DEFINING THE TERM "EXTENDED TRAIL" IN SECTION 3 OF THE ACT AND NEW DEFINITIONS IN A NEW SECTION 12, WE HAVE NO OBJECTION TO THESE AMENDMENTS. OTHERS, HOWEVER, ARE SUBSTANTIVE, AND WE FEEL STRONGLY THAT SOME SHOULD AND SOME SHOULD NOT BE ENACTED.

WITH THE HELP OF YOUR COMMITTEE, MR. CHAIRMAN, WE HAVE BEEN WORKING TO APPLY A LAND PROTECTION POLICY TO AREAS FUNDED BY THE LAND AND WATER CONSERVATION FUND. THE THRUST OF THIS NEW POLICY, WHICH WE PUBLISHED IN MAY 1982 FOLLOWING THE INVALUABLE WORKSHOPS LAST YEAR WHICH YOUR COMMITTEE HOSTED, IS THE USE WHEREVER APPROPRIATE OF ALTERNATIVES TO FEE PURCHASE OF LAND. TO IMPLEMENT THIS POLICY SOME NEW TOOLS ARE NEEDED. H.R. 861 CONTAINS SEVERAL PROVISIONS THAT WOULD GIVE THE NATIONAL PARK SERVICE AND THE FOREST SERVICE SOME NEW TOOLS TO APPLY LAND PROTECTION TO UNITS OF THE NATIONAL TRAILS SYSTEM. WE SUPPORT THESE PROVISIONS WHOLEHEARTEDLY.

YOU WILL RECALL THAT, AT THIS YEAR'S WORKSHOP, WE RELEASED REPORTS OF CERTAIN CASE STUDIES WE HAD DONE. THESE CASE STUDIES INDICATED HOW ALTERNATIVES TO

FEE SIMPLE ACQUISITON COULD ACCOMPLISH AN APPROPRIATE LEVEL OF PROTECTION AND AT THE SAME TIME REDUCE FEDERAL COSTS. ONE SUCH STUDY TREATED THE APPALACHIAN NATIONAL SCENIC TRAIL, ONE OF THE FIRST COMPONENTS DESIGNATED BY CONGRESS AS PART OF THE NATIONAL TRAILS SYSTEM. H.R. 861 PROVIDES THE FOLLOWING TOOLS WHICH OUR CASE STUDY INDICATED WOULD BE DESIRABLE FOR APPLICATION TO THE APPALACHIAN TRAIL:

--DISPOSAL OF REMNANT LANDS. THE BILL AUTHORIZES THE ACQUISITION OF REMNANTS OF WHOLE PARCELS, WITH THE OWNER'S CONSENT, AND THE SALE OF THE UNNEEDED REMNANT. UNDER EXISTING LAW, THE PROCEEDS OF SUCH A SALE WOULD GO INTO THE LAND AND WATER CONSERVATION FUND. UNDER H.R. 861, HOWEVER, THE PROCEEDS SHALL BE CREDITED TO THE APPROPRIATION BEARING THE COST OF LAND ACQUISITION FOR THE PARTICULAR TRAIL. THUS, THESE FUNDS BECOME IMMEDIATELY AVAILABLE --WITHOUT FURTHER APPROPRIATION--FOR CONTINUED ACQUISITION OF NEEDED TRAIL RIGHTS-OF-WAY.

--TAX STATUS OF DONATED INTERSTS. THE BILL STATES THAT FOR FEDERAL TAX PURPOSES, DONATION OF LESS-THAN-FEE INTERESTS FOR TRAIL PURPOSES WILL SATISFY THE REQUIREMENT FOR CONSERVATION PURPOSES. THIS LANGUAGE WILL CLARIFY THE STATUS OF DONATIONS OF EASEMENTS WITHIN AS WELL AS NEAR THE TRAIL CORRIDOR, THUS ENCOURAGING COST-EFFECTIVE LAND PROTECTION.

WE STRONGLY SUPPORT THE FOREGOING PROVISIONS. IN ADDITION, WE STRONGLY SUPPORT THE PROVISIONS IN THE BILL WHICH ENCOURAGE THE USE OF THE VOLUNTEERS

IN THE PARKS AND VOLUNTEERS IN THE NATIONAL FOREST PROGRAMS FOR TRAIL MAINTENANCE, AND AUTHORIZE ASSISTANCE TO VOLUNTEERS WITH TOOLS AND LIMITED FINANCIAL ASSISTANCE. VOLUNTEER WORK IS HIGHLY COST EFFECTIVE AND SHOULD BE ENCOURAGED.

WE DO NOTE, HOWEVER, THAT THE BUREAU OF LAND MANAGEMENT MANAGES A SIGNIFICANT PORTION OF THE NATIONAL TRAILS SYSTEM BUT ITS AUTHORITY TO ACCEPT VOLUNTEER SERVICES FOR PUBLIC LANDS ACTIVITIES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 HAS BEEN OVERLOOKED IN H.R. 861. WE RECOMMEND THAT THE NATIONAL TRAILS SYSTEM ACT BE AMENDED TO TAKE INTO ACCOUNT BLM'S ROLE IN MANAGING THOSE PORTIONS OF THE NATIONAL TRAILS SYSTEM WHICH ARE ON PUBLIC LAND.

ALTHOUGH BLM HAS THE AUTHORITY TO ACCEPT VOLUNTEER SERVICES FOR PUBLIC LANDS ACTIVITIES, THAT AUTHORITY HAS SOME LIMITATIONS THAT DO NOT APPLY TO OTHER AGENCIES AND THAT HAMPER BLM'S VOLUNTEER PROGRAM. WE RECOMMEND THAT NEW SECTION 11 OF THE BILL BE AMENDED BY ADDING A NEW SUBSECTION THAT WOULD GRANT AUTHORITIES FOR THE BLM VOLUNTEER PROGRAM THAT ARE COMPARABLE TO THOSE PREVIOUSLY GRANTED FOR THE NATIONAL PARK SERVICE AND THE U.S. FOREST SERVICE. THE PROPOSED AMENDMENT WOULD BE APPLICABLE TO ALL BLM-MANAGED PUBLIC LANDS, NOT JUST THOSE LANDS ON WHICH TRAILS ARE LOCATED. IT WOULD ENABLE THE BLM TO PROVIDE VOLUNTEERS, EITHER DIRECTLY OR BY REIMBURSEMENT, CERTAIN INCIDENTALS SUCH AS MEALS, AND TRANSPORTATION TO AND FROM WORK SITES: AND TO PROTECT VOLUNTEERS FROM LIABILITY AND COSTS INCURRED FROM INJURIES OCCURRING ON THE JOB. PROPOSED LANGUAGE FOR SUCH AN AMENDMENT HAS BEEN PROVIDED TO THE CONGRESS AND IS REFLECTED IN S. 2753.

WE ALSO SUPPORT THE AUTHORITY IN THE BILL TO TRANSFER, BY AGREEMENT, MANAGEMENT RESPONSIBILITY FOR PARTICULAR TRAIL SEGMENTS BETWEEN AGENCIES, SUCH AS THE NATIONAL PARK SERVICE AND THE FOREST SERVICE. IN ADDITION, WE HAVE NO OBJECTION TO THE PROVISION IN THE BILL AUTHORIZING THE SECRETARY OF AGRICULTURE TO DESIGNATE NATIONAL RECREATION TRAILS PROVIDED THAT SUCH AUTHORITY IS INTERPRETED TO APPLY TO TRAILS ON FOREST SERVICE LANDS OR ON PRIVATE LANDS WITHIN NATIONAL FORESTS WITH THE CONSENT OF THE OWNER. WE EXPECT TO MAINTAIN THE CLOSE COORDINATION WHICH WE NOW ENJOY WITH AGRICULTURE TO ASSURE THAT STANDARDS FOR SUCH DESIGNATIONS ARE BASICALLY THE SAME.

THE BILL WOULD ADD A NEW SUBSECTION TO SECTION 8 OF THE ACT DIRECTING THE SECRETARY OF TRANSPORTATION, THE CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION, AND THIS DEPARTMENT TO ENCOURAGE STATE AND LOCAL AGENCIES AND PRIVATE INTERESTS TO ESTABLISH APPROPRIATE TRAILS. IT FURTHER ENCOURAGES THE INTERIM USE OF RAILBEDS BY PROVIDING THAT SUCH USE, IF CONSISTENT WITH THE NATIONAL TRAILS SYSTEM ACT, WILL NOT BE TREATED AS ABANDONMENT OF A RAILBED. WHILE WE STRONGLY SUPPORT THE OBJECTIVES OF THIS PROVISION, WE DEFER TO THE VIEWS OF THE OTHER AGENCIES INVOLVED AS TO ITS ENACTMENT.

WE DO NOT RECOMMEND, MR. CHAIRMAN, THE PROVISION ON PAGE 4, LINES 1-15 OF THE BILL REQUIRING THE SUBMISSION OF A NATIONAL TRAILS SYSTEM PLAN EVERY TWO YEARS TO THE CONGRESS. WE BELIEVE THE PRESENT SYSTEM WHEREBY CERTAIN TRAILS ARE DESIGNATED FOR STUDY IS FAR PREFERABLE, IN THAT LIMITED STAFF AND FUNDS CAN BE CONCENTRATED ON THOSE SPECIFIC TRAILS WHICH CONGRESS SINGLES OUT. A NATIONWIDE PLAN EVERY TWO YEARS WOULD, OF NECESSITY, BE VERY GENERAL. WE HAVE NO ESTIMATE OF THE COST OF THIS PROVISION.

NON-TRAIL RELATED PROVISONS

SECTION 211 WOULD AMEND THE LAND AND WATER CONSERVATION FUND ACT OF 1965 TO PROHIBIT ENTRANCE FEES AT NATIONAL RECREATION AREAS, COMPONENTS OF THE WILD AND SCENIC RIVERS AND NATIONAL TRAILS SYSTEMS, OR AT ANY UNIT OF THE NATIONAL PARK SYSTEM WHERE THE COST OF COLLECTION EXCEEDS RECEIPTS COLLECTED IN 1979. WE strongly RECOMMEND THAT THIS SECTION BE DELETED. ALTHOUGH NO ENTRANCE FEES ARE NOW CHARGED AT ANY OF THE AREAS THAT WOULD BE AFFECTED, THE SECRETARY SHOULD HAVE THE FLEXIBILITY TO ESTABLISH SUCH A FEE WHERE APPROPRIATE TO ASSURE THAT PEOPLE WHO BENEFIT FROM A SERVICE PAY A GREATER SHARE OF THE COST.

MR. CHAIRMAN, EXCEPT FOR TITLES III AND IV, DESIGNATING THE "BIZZ JOHNSON TRAIL" AND THE "ROY TAYLOR FOREST," THIS CONCLUDES MY PREPARED REMARKS. WE HAVE NO OBJECTION TO THESE LAST TWO TITLES OF THE BILL. THANK YOU VERY MUCH.

Senator **WALLOP**. Thank you. Please proceed.

STATEMENT OF ROMAN H. KOENINGS, ASSISTANT DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. **KOENINGS**. My name is Roman Koenings, Assistant Director of the Bureau of Land Management. S. 2753 as introduced by Senator McClure would amend the Federal Land Policy and Management Act of 1976 to grant BLM the type of volunteer program authority we are now recommending.

We would be happy to work with the committee to adapt the provisions of S. 2753 to H.R. 861 and to develop the additional appropriate amendments to H.R. 861 to insure that it reflects BLM's role in managing portions of the National Trails System.

We feel that we have an important contribution to make to the National Trails System and we would like to have the authority to do it.

Thank you.

Senator **WALLOP**. Thank you. I think you will find some sympathy with the subcommittee on that, certainly the chairman, with regards to the amendment allowing BLM the same kind of access to volunteer services which other departments have.

Can I ask either or both, Ms. Grier and Mr. Cargill, if there are other tools needed than those suggested or additional tools needed to those suggested in the bill for the acquisition of less than fee interest on some of these trails? Do you feel that you have flexibility enough now with what is there or are there some things that we could add to it that would be more creative and give you more flexibility in acquiring these?

Mr. **CARGILL**. My initial reaction, Mr. Chairman, is that the tools for acquiring less than fee acquisition are adequate at this time with the provisions that the bill provides. I don't have any additional suggestions.

Senator WALLOP. Can you tell me just, for example, if you can, in either the Park Service or the Forest Service, use the kind of California approach where they bought—you have got a remnant provision in here—but where they bought whole pieces of California coast, applied the easements that they wanted and then sold the whole piece back and retained a remarkably greater amount of the value to the government than if they had just assessed the value of the easements separately.

Is that possible for you?

Ms. GRIER. We feel that is a very important tool and I think we have that authority, Mr. Chairman.

Senator WALLOP. The remnant provision that is in this bill, do you feel it would add to it?

Ms. GRIER. Of course, perhaps I do not understand the remnant provision as being the same as a sell-back, with a deed restriction governing the use of the property that we want to protect. Is that the way it is designed to be interpreted? It was my understanding from reading this, now maybe I just don't understand the term "remnants," but in looking at the use as it is described in the bill, I get the impression that we will keep a portion of the land and sell the part back that is not needed. Or is that the same as the sell-back restrictions?

Senator WALLOP. In a way, it is not the same, because at least in the case of California coastal interests, the coastal zoning commission that they have out there they sometimes bought whole tracts of land, farms or other pieces of land along the coast, and they then applied the easements that they wanted on there, which in most cases out there was subdivisions and perhaps some access, and then put it back on the market as fee land with an easement attached and they found that it was quite a lot cheaper for them than simply buying easements, that there was a greater value attached to easements.

What I would suggest is that we have staff work with you and see if maybe there are additional tools, because I am very much interested both from the standpoint of the public purse and the efficiency in keeping as much of this country as we can on the private tax rolls and still provide the general use that is here.

Let me ask either of you if you can comment on some of the problems that landowners have brought to the attention of this committee, landowners along trails and through whom trails pass about their problems with maintenance, trash, vandalism, other incidents of sheer nuisance, that test their patience as good neighbors.

Have you been made aware of a number of events like this and if so, is there anything that can be done on their behalf?

Ms. GRIER. I have not been aware, Mr. Chairman, but I can certainly imagine it happening. And I think it is one of the problems that we would naturally run into. I would hope that through the use of the volunteers that we have had good luck with in a good many areas that some of that could be alleviated. Because I know those who are interested in trails are interested in maintaining good relations with owners along the trail system.

And it is just to everyone's benefit that if any problems arise that they be alleviated.

Senator WALLOP. I have no problem with that and certainly do not know of anybody who does. The great majority of trail users is a tremendous asset that the country has, but I think we are going to have to begin to look as the Congress and as administrative agencies and as other things at the ability to provide some police protection with the kinds of problems we had along the Appalachian Trail last year with crimes of violence and with the lesser but still irritable crimes of trespassing, vandalism, littering, and other things that happen to neighbors along there. I suggest that volunteers may be able to handle a great portion of that, but there probably is some portion of it that would simply have to be provided.

Mr. CARGILL. Mr. Chairman, the volunteer program will be very helpful in terms of the trash cleanup and litter cleanup. We are aware that both vandalism and littering is a problem not only in the National Trails System but in recreation areas throughout the national forest system.

Our position in regard to the serious crimes which you mentioned is to cooperate fully with local, State and county law enforcement officials who would have the authority to enforce State laws on the national forest system where we have the proprietory jurisdictions.

Senator WALLOP. Keep in mind though that in the event that indeed it is a national trail and you are inviting a nation of users in there, you may be putting the local law enforcement situation beyond its capability in some instances. I guess that is one reason why, Ms. Grier, I find great sympathy with your recommendation that we take out that mandatory two trails a year suggestion.

Ms. GRIER. The plan?

Senator WALLOP. Yes. I mean with a 100,000 miles now and more coming and more usefully able to be added, we still have a fundamental problem of maintaining the value for which those things were designated in the first place.

Again, I point out that I think one of the tragedies within the reach of this country, and it is always one that we have, is that by our biting off more than we can chew we become responsible for the very degradation that we seek to remove as a potential by the designation in the first place.

It is something that we have to begin to come to grips with. In our national parks, as you well know, we have obligations to buy and obligations to maintain that are very rich on the thin platter that is offered to us now.

We will have a couple of questions that we will submit to you for the record to develop this and I would ask one other thing, that if you would at least think about, if you cannot comment now, is how we might follow the European pattern of limiting landowner's liability if there is such a thing as a national trail designation through their property or they have granted or donated or otherwise we have acquired an easement we can limit the attractive nuisance kinds of liability and other things that go with prodigious societies now, so that in the future as we seek to designate trails and even those that we have, we do not have as massive local resistence because of fear of what might happen to you.

If you could think on that, comment on it, and see if there is not something we can do, I know the committee would appreciate it and I think it would be a meaningful addition to this bill.

Ms. GRIER. Very good.

Mr. CARGILL. We would be happy to respond.

Senator WALLOP. I am not sure what it is or even if it can be done in timeliness, but it is something that if it can be we ought to do it and if it cannot be, we ought to be with it and do it as soon as we can. I would not want to hold up this whole bill on account of that, but on the other hand if there is some reasonably opportune moment, I think we ought to cease it.

Thank all three of you for coming.

The next panel is a panel composed of Mr. Dave Startzell, the Appalachian Trail Conference from Harpers Ferry, W. Va.; Mr. Scott Johnson, the Potomac Appalachian Trail Club, Washington, D.C.; and JoAnn Dolan, New York-New Jersey Trail Conference from the city of New York.

We welcome you. Mr. Startzell, begin please.

STATEMENT OF DAVE N. STARTZELL, ASSOCIATE DIRECTOR, APPALACHIAN TRAIL CONFERENCE, HARPERS FERRY, W. VA.

Mr. STARTZELL. Thank you, sir. I am David Startzell, associate director of the Appalachian Trail Conference. I as well as Mr. Johnson will be speaking in support of H.R. 861. Let me begin by just giving you just a very small amount of background about the conference and the trail.

The conference, as you are perhaps aware, is a private, nonprofit organization founded in 1925 to coordinate the efforts of various volunteer based organizations as well as many individuals interested in developing and maintaining and preserving the Appalachian Trail.

Today we are composed of about 14,000 members. In addition, we are in effect a federation of about 60 hiking and outing clubs, each of which maintains some portion of the Appalachian Trail. The trail itself is perhaps the best known long-distance hiking trail in the world. It is 2,100 miles in length, extending from Maine to Georgia. Along the way it passes through eight national forests, six units of the national park system and more than 60 public land areas in 14 States.

As you might gather from those figures, the trail represents not only an extraordinary volunteer and private sector initiative, but it also suggests a very high degree of cooperation among a great many Federal, State and local governmental partners involved in the development, protection, and management of that resource.

The trail project is perhaps benefited as much as any trail from the original National Trail Systems Act and Amendments that have come about since that date. In the original legislation of 1968 the trail was designated as one of the first national scenic trails. And at that time, the bill authorized at least a minimal protection effort by the Park Service and the Forest Service to preserve resources along the route.

In 1978, the bill was again amended to provide an even stronger mandate for Federal as well as State protection of that resource. In a sense then, we view the amendments of the subject bill, H.R. 861 as being a logical extension of that evolution in the National Trails System Act, and although we endorse virtually all of the provisions of that bill, I would like to spend the remainder of my time focusing on some specific portions of the bill, particularly the technical amendments, many of which relate to our experience on the Appalachian Trail.

I am pleased to report as an aside at least on this occasion we seem to be in considerable harmony with the administration in that many of the sections which the earlier witnesses alluded to are ones which we also very much support.

Specifically 207(a)(2), which pertains to the authority of the Secretary to exchange administration on portions of the trail. It is very relevant in our case. Perhaps the best example of this is in the Jefferson National Forest area where the National Park Service has acquired lands along the trail immediately adjacent to the forest boundaries.

Since there is no Park Service administrative presence in that area, it is only logical that the Forest Service, who does have immediate access, be in a position to assume responsibility there. They have indicated their willingness to do this in the past. However, they have lacked the necessary legislative authority to proceed with that.

Section 207(b)(2) pertains to the acquisition of whole tracts from consenting landowners. It also, as the earlier witnesses noted, provides for the exchange or disposal of these properties with the proceeds being returned to the acquisition account of the affected trail.

We certainly endorse this provision. It has been our experience in cooperating with both the Park Service and the Forest Service that the whole tract capability is a very desirable tool in negotiating with landowners, particularly in hardship and severance cases.

We are also very sympathetic to the exchange issue and to the proceeds issue, since we believe it will lead to more effective use of available appropriations and more effective use of necessary lands for trail protection.

Section 207(f)(3) and the new section 11, both encourage our participation by volunteers and volunteer based organizations in the planning and development and maintenance and management of trails. Although we have been in that business for more than half a century and probably enjoy considerable cooperation with our agency partners, up and down the length of the trail, we nevertheless think this is a very helpful provision, both because it provides some clarity in the cooperative agreement authority of the various secretaries, and also because I think it may well give some additional confidence and encouragement to new volunteer organizations if they are aware they can have the kind of assistance that is alluded to in these provisions, particularly the use of Federal facilities and equipment.

Finally, section 207(k) provides the clarification of existing Federal law related to donations. Our interest in this provision, I think is primarily to our hope that that may lead to effective preservation of areas that lie outside of accessed boundaries.

Our experience along the trail, and I am sure this is true elsewhere is that there are many, many areas, I am reminded particularly of some of the view-sheds that one sees from high points along the trail that simply cannot be protected by straightforward fee acquisition. And our hope is that this section will provide and give clarification in the law that will enable the agencies and private organizations to get more effectively involved in preserving these areas.

At this point I would like to turn the remarks over to Ms. Dolan. Thank you, Mr. Chairman.

[The prepared statement of Mr. Startzell follows:]

Testimony

SUBMITTED BY: David N. Startzell, Associate Director, Appalachian Trail Conference

FOR: Hearings on H.R. 861, a bill to amend the National Trails System Act, before the Subcommittee on Public Lands and Reserved Water, Senate Committee on Energy and Natural Resources

DATE: August 4, 1982

The Appalachian Trail Conference is a private, nonprofit, educational organization composed of approximately 15,000 members as well as over 60 hiking and outing clubs, representing an estimated 75,000 individuals. For some fifty-seven years, the Conference has coordinated both public and private efforts to develop, maintain, and preserve the Appalachian Trail for the benefit of millions of Americans. On this occasion, and on behalf of the Appalachian Trail Conference, I wish to testify in support of the proposed amendments to the National Trails System Act as embodied in H.R. 861.

As the Subcommittee is aware, the Appalachian Trail is a continuous, marked footpath which traverses the Appalachian Mountain chain from Maine to Georgia for a distance of approximately 2,100 miles. Throughout this great distance, the Trail provides a slender thread linking more than sixty public land areas in fourteen states, eight National Forests, and six units of the National Park System. Virtually every mile of the Trail is within easy access of a major population center, and some portion of the Trail is within a day's drive of one half of the population of the United States. The Appalachian Trail thus provides opportunities to traverse and experience countless wild, scenic, and pastoral settings for an estimated 3-4 million visitors each year. It also affords an opportunity for continuous, long distance hiking that is perhaps unparalleled throughout the world.

First conceived in 1921, the Trail was initially constructed between 1925 and 1937, largely through the efforts of volunteers. But, for more than half a century, the Trail project has been characterized by an extraordinary degree of cooperation and partnership among a great variety of federal and state agencies, local governments, and private organizations and individuals. This cooperation, toward a common goal of protecting and managing the Appalachian Trail and adjacent lands, and indeed much of the success of the Trail project in recent years, must be attributed in large measure to the adoption of the National Trails System Act and subsequent amendments.

In 1968 the Act (PL 90-543) designated the Appalachian Trail as one of our nation's first National Scenic Trails. Moreover, the Act established the federal responsibility to encourage the development and the preservation of trails as a means to provide the nation's people with access to the significant natural, scenic, historic, and cultural resources of the lands traversed by such trails. Finally, through a variety of provisions, the Act encouraged cooperation among federal and state agencies and the private sector toward the development, maintenance, and administration of a national trails system.

In 1978 the Act was amended in order to reaffirm the federal commitment to the permanent preservation and care of the Appalachian Trail specifically (PL 95-248). These and subsequent amendments have enabled the implementation of a highly successful and innovative land acquisition program throughout the range of the Trail. They have also stimulated a renewed commitment on the part of federal and state agencies, and particularly among the private organizations represented by the Appalachian Trail Conference, to promote strong and continuing volunteer-based operation and management of the Trail and associated lands.

Recognizing the above, the Appalachian Trail Conference views the present amendments incorporated in H.R. 861 as both desirable and logical extensions of the evolution of this important Act and of the federal commitment to the development of a national trails system in general. While we strongly endorse the language and intent of H.R. 861 as a whole, we wish to expressly support a number of the proposed amendments which we believe are particularly relevant to our experience in developing and managing the Appalachian National Scenic Trail. Specifically, these provisions of H.R. 861 include the following:

- Section 207(a)(2) - provides that a Secretary charged with the administration of a designated trail may transfer management of any specified trail segment to the other Secretary through a joint memorandum of agreement. Under such an agreement the management of the affected trail segment will be subject to the laws, rules and regulations of the Secretary provided with the management authority under the agreement. This provision is particularly pertinent to the Appalachian Trail in areas where the National Park Service has acquired lands along the Trail right-of-way adjacent to National Forest boundaries.

- Section 207(d)(2) - provides that the Secretary may, with the affected landowner's consent, acquire an entire tract of land when a portion of the land lies outside the trail right-of-way. Such acquired land areas, outside the trail right-of-way, may be exchanged for other non-federal land areas inside the designated trail right-of-way or they may be otherwise disposed. The proceeds from such disposal can be credited to the appropriation account bearing the cost of land acquisition for the affected trail right-of-way.

  We believe these amendments provide desirable flexibility in negotiating with landowners along trail rights-of-way and provide useful incentives for preserving significant resources while permitting more effective use of available appropriations.

- Section 207(f)(3) and Section 11 - encourage broader participation of volunteers and volunteer-based organizations in the planning, development, maintenance and management of trails by expanding the cooperative agreement authority of the relevant Secretary. This authority allows the Secretary to provide technical assistance, financial assistance, and permit the use of federal facilities and equipment to individuals, private organizations or landowners who participate in trail management activities. The Secretaries are further authorized and encouraged to extend the use of the provisions of the Volunteers in the Parks and Volunteers in the Forests Acts under coooperative agreements. These provisions would extend important protection to parties to these agreements from personal liability arising from authorized trail activities. Finally, Section 207 (f)(3) encourages the Secretaries to cooperate with state and local governments to develop laws to protect private landowners from trail-related trespass or property damage, as well as personal liability.

- Section 207(k) - provides an important clarification of existing federal law to encourage the donation and conveyance of lands and easements to qualified organizations or agencies in return for various tax benefits. The provisions of this section may be particularly relevant to the preservation of resource values that are significant to the trail experience but lie outside the boundaries of federal right-of-way acquisition corridors.

Finally, we wish to endorse the general provisions and intents of H.R. 861 as they relate to the development of National Scenic and National Recreation Trails both within and outside existing public land areas. Such designations could facilitate the distribution of hiking and other trail users across a broader range of trail networks and thus aid in the prevention of overuse of certain trail segments.

In closing, we wish to emphasize once again that the National Trails System Act and subsequent amendments have had a positive and far reaching effect on the Appalachian Trail project. We believe that the subject amendments included in H.R. 861 will have similar and beneficial effects on our program as well as many other trail projects. We therefore respectfully urge this Subcommittee to adopt H.R. 861 in its entirety.

Sincerely,

David N. Startzell

David N. Startzell

STATEMENT OF JOANN DOLAN, EXECUTIVE DIRECTOR, NEW YORK-NEW JERSEY TRAIL CONFERENCE, NEW YORK, N.Y.

Ms. DOLAN. Members of the New York-New Jersey Trail Conference strongly urge you to support amendments to the National Trails System Act as proposed in H.R. 861. This act was intended to provide an area for people in urban areas of the Nation to have access to walking preserved outdoor areas, thereby meeting the outdoor recreation needs of an expanding population.

Recognizing the valuable contribution that volunteers and nonprofit trail groups have made toward development and maintenance of the Nation's trails, this act is also meant to encourage the role of the volunteer citizens in their job of planning, development, maintenance, and management of the trails where appropriate. The amendments proposed in H.R. 861 will greatly further the enactment of this policy.

The New York-New Jersey Trail Conference was founded in 1920 as a nonprofit federation of hiking clubs dedicated to building and maintaining hiking trails and to preserving wildlands. Today we build and maintain over 700 miles of hiking trails in the metropolitan area of New York and New Jersey. This is done through volunteer efforts.

Over 60 hiking and outdoor clubs are affiliate members of the New York-New Jersey Trail Conference with a combined membership of more than 51,000 people. Members of the New York-New Jersey Trail Conference began to build the first segment of the Appalachian Trail in Harriman-Bear Mountain Park in New York in 1923, when it was opened.

Since then we have been the builders and maintainers of the Appalachian Trail in New York and in New Jersey. Presently, our volunteers are managing trail relocations within the resource protection program for the Appalachian Trail in these two States.

The Appalachian Trail, a 2,100-mile footpath, extending across 14 States from Maine to Georgia, was proposed by Benton MacKaye in 1921. His purpose was to save green space for recreation and make it accessible to the metropolitan regions on the eastern seaboard. Mr. MacKaye's plan has become extremely important to residents of the highly populated States along the east coast.

The Appalachian Trail is the longest continuously marked hiking trail in the world. Hikers come from every State and from overseas to walk it. About 150 to 200 people hike the whole 2,100 miles each summer, taking 4 to 6 months to complete. In New York alone, up to 10,000 people are estimated to be on the trail each year. Up to 3 or 4 million are on the entire route and yet on many sections a hiker meets no one.

It is a critical time to preserve land for the Appalachian Trail before crowded conditions and development will permanently prevent this opportunity. So we view this as a very critical time. H.R. 861 is particularly important to facilitate acquisition protection. H.R. 861 encourages donation and conveyance of lands and easements. This provision, coupled with the tax deduction provisions of the Tax Treatment Extension Act of 1980, Public Law 96-541, would encourage private sector land provision incentive.

In addition to our desire to complete land acquisition for trail protection, we are naturally concerned that our volunteers are encouraged through the National Trails System Act, as supported with H.R. 861 amendments, to continue their present work and assume additional responsibility for operation, development, and maintenance of federally owned trail areas.

As volunteers, we are proud of meeting the challenges presented by the Appalachian Trail protection program. Through this program the most sophisticated level of volunteer trail work has been demonstrated in the history of our organization and it is evident that the Federal Government has a tremendous volunteer resource available to them.

Volunteers are out on trail work trips several times a month all year round, involving many in addition to our own club members, church youth groups, scouts, school classes, and even landowners, totaling nearly 500 that we call upon to work on the trails. This is in addition to those volunteers who do the maintenance of the existing trail, cutting back vegetation and repainting blazes.

Meantime, the volunteers have moved on to the next stage, that of managing the Appalachian Trail as specified by legislation. We have entered cooperative agreements with the State and Federal Governments. We have also been a party to local management planning, meeting in each locality where appropriate, with town supervisors, police and fire chiefs, recreational consultants, search and rescue volunteers, as well as landowners adjacent to the trail corridor.

Topics discussed include possible camp sites, water quality, parking, sanitation, hunting, search and rescue, facilities such as shelters, signs, and so forth.

Provisions in the H.R. 861 amendments would help our volunteer efforts in many ways. For one, it would extend potential benefits of the volunteers in the Forest Act of 1972 and the volunteers in the Parks Act of 1969 to trail workers.

Also, it would expand the cooperative agreement authority of the Federal Government to further Federal Government/volunteer partnership in the upkeep and maintenance of trails. In addition, it would also enable Federal land managers to render assistance to volunteer groups by providing technical help, tools and other facilities for the benefit of trail work.

It is important to mention that through local management planning, we recognize the anxiety of local property owners being placed in an uncertain position with regard to their personal liability. H.R. 861 would encourage Secretaries of Agriculture and Interior to work with State and local governments in alleviating any actual or perceived instances of landowner liability for the public uses of trails.

Although not able to address all aspects of H.R. 861, the New York-New Jersey Trail Conference urges your support of these amendments. They will place a greater reliance on citizen participation to accomplish the purpose of the National Trails System Act of 1968.

Amendments can lead to an improved national trails system that will better reflect a variety of local recreation interests. It will truly improve recognition and protection for national scenic and historic trails which Congress may establish.

Thank you.

[The prepared statement of Ms. Dolan follows:]

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New York New Jersey Trail Conference is an affiliate of the Appalachian Trail Conference

August 4, 1982

MEMORANDUM OF SUPPORT

TO: Subcommittee on Public Lands and Reserve Water
Senate Committee on Energy and Natural Resources

FROM: New York-New Jersey Trail Conference
JoAnn Dolan, Executive Director

RE: Hearing on HR-861

Members of the New York-New Jersey Trail Conference strongly urge you to support amendments to the National Trails System Act as proposed in HR-861. This Act was intended to provide an area for people in urban areas of the nation to have access to walking in preserved outdoor areas, thereby meeting the outdoor recreation needs of an expanding population. Recognizing the valuable contribution that volunteers and non-profit trail groups have made toward development and maintenance of the Nation's trails, this Act is also meant to encourage the role of the volunteer citizens in their job of planning, development, maintenance and management of the trails where appropriate. The amendments proposed in HR-861 will greatly further the enactment of this policy.

The New York-New Jersey Trail Conference was founded in 1920 as a non-profit federation of hiking clubs dedicated to building and maintaining hiking trails and to preserving wildlands. Today we build and maintain over 700 miles of hiking trails in the metropolitan area of New York and New Jersey through volunteer efforts. Over 60 hiking/outdoor clubs are affiliate members of the NY-NJ Trail Conference, with a combined membership of more than 51,000 people. Members of the NY-NJ Trail Conference began to build the first segment of the Appalachian Trail in Harriman-Bear Mountain Park, New York, which opened in 1923. Since then, we have been the builders and maintainers of the Appalachian Trail in New York and New Jersey. Presently our volunteers are managing trail relocations within the resource protection program for the Appalachian Trail in these two states.

The Appalachian Trail, a 2,100 mile footpath extending across 14 states from Maine to Georgia was proposed by Benton MacKaye in 1921. His purpose was to save green space for recreation and make it accessible to the metropolitan regions on the Eastern Seaboard. Mr. MacKaye's plan has become extremely important to residents of the highly populated states along the East Coast.

The Appalachian Trail is the longest continuously marked hiking trail in the world. Hikers come from every State and from overseas to walk it. About 150 to 200 people hike the whole 2,100 miles each summer, taking from 4 to 6 months to complete. In New York alone, up to 10,000 people are estimated to be on the Trail each year. Up to 3 to 4 million are on the entire route, and yet on many sections the hiker meets no one.

It is a critical time to preserve land for the Appalachian Trail before crowded conditions and development permanently prevent this opportunity. HR-861 is particularly important to facilitate acquisition protection. HR-861 encourages donation and conveyance of lands and easements. This provision, coupled with the tax deduction provisions of the Tax Treatment Extension Act of 1980 (PL 96-541), would encourage private sector land provision incentive.

In addition to our desire to complete land acquisition for trail protection, we are naturally concerned that our volunteers are encouraged through the National Trails System Act, with HR-861 amendments, to continue their present work and assume additional responsibility for operation, development and maintenance of federally owned trail areas.

As volunteers, we are proud of meeting the challenges presented by the Appalachian Trail protection program. Through this program the most sophisticated level of volunteer trail work has been demonstrated in the history of our organization, and it is evident that the federal government has a tremendous volunteer resource available to them. Volunteers are out on trail work trips several times a month all year round, involving many in addition to club members: church youth groups, Scouts, school classes, even land owners; a total of nearly 500 to call upon. This is in addition to those volunteers who do the maintenance of the existing Trail, cutting back vegetation and repainting blazes. Meantime, the volunteers have moved on to the next stage, that of managing the Appalachian Trail as specified by legislation. We have entered Co-operative Agreements with the State and Federal governments. We have also been a party to Local Management Planning meeting in each locality, where appropriate, with Town Supervisors, Police and Fire Chiefs, recreational consultants, Search and Rescue volunteers, as well as landowners adjacent to the Trail corridor. Topics discussed include possible camp sites, water quality, parking, sanitation, hunting, search and rescue, facilities such as shelters, signs, etc.

Provisions in the HR-861 amendments would help our volunteer efforts in many ways. For one, it would extend potential benefits of the Volunteers in the Forest Act of 1972 and the Volunteers in the Parks Act of 1969 to trail workers. Also, it would expand the cooperative agreement authority of the Federal Government to further Federal Government/Volunteer partnership in the upkeep and maintenance of trails. In addition, it would enable federal land managers to render assistance to volunteer groups by providing technical help, tools and other facilities for the benefit of trail work.

It is important to mention that through Local Management Planning, we recognize the anxiety of local property owners being placed in an uncertain position with regard to their personal liability. HR-861 would encourage Secretaries of Agriculture and Interior to work with State and Local government in alleviating any actual or perceived instances of landowner liability for the public uses of trails.

Section 211 of HR-861 amends the Land and Water Conservation Fund Act of 1965 to expressly prohibit the imposition of any Federal entrance fee to specified areas including the National Trails System. Although we would prefer this amendment to remain, we do not want it to jeopardize the passage of HR-861 because of the user fee issue. Therefore, we support HR-861 with or without Section 211.

Although not able to address all aspects of HR-861, the New York-New Jersey Trail Conference urges your support of these amendments. They will place a greater reliance on citizen participation to accomplish the purpose of National Trails System Act of 1968. Amendments can lead to an improved national trails system that will better reflect a variety of local recreation interests. It will truly improve recognition and protection for national scenic and historic trails which Congress may establish.

Senator WALLOP. Thank you, Ms. Dolan.

May I ask the indulgence of you and other witnesses to come, there is a briefing for Senators that starts at 5 o'clock on the situation with Beruit and we have some 14 more witnesses on this and other bills. So if you would indulge me and summarize a little bit, I would appreciate it, because I want to make certain that everybody has an opportunity.

STATEMENT OF M. SCOTT JOHNSON, POTOMAC APPALACHIAN TRAIL CLUB, WASHINGTON, D.C.

Mr. JOHNSON. Mr. Chairman, I would be most happy to reduce my remarks to just a few very brief comments. My name is M. Scott Johnson and I am here on behalf of the Potomac Appalachian Trail Club, which was founded in 1927 primarily to help with the construction of the Appalachian Trail. And we have submitted written comments, which will be in the record.

The two major aspects which I would like to emphasize are that our organization with just over 3,000 members maintains several long hiking trails. We have a 240-mile section of the Appalachian Trail that we have been responsible for for 55 years.

We conceived and constructed a Big Blue Trail in Virginia and West Virginia, which is maintained by our volunteers. We are responsible for some 200 miles of trail in the Shenandoah National Park as well as even 25 miles here in the District of Columbia and of Rock Creek and adjacent parks.

We believe, therefore, that the volunteer aspects of the bill are very well framed and that they should be encouraged. Those aspects of H.R. 861 are important and we feel that our history of trail maintenance shows this volunteer partnership of government and private individuals will work.

So, that is my first major point that I want to indicate to you. The other that I think in my brief comments that I would mention are the various aspects of H.R. 861 with respect to enabling gifts of land and easements and the provisions which were included to facilitate transfers of land, we very much support those. And with those, I will rest on our written statement.

[The prepared statement of Mr. Johnson follows:]

**POTOMAC
APPALACHIAN TRAIL
CLUB**
1718 N STREET, N.W., WASHINGTON, D.C. 20036
(202) 638-5306

August 4, 1982

STATEMENT IN SUPPORT OF H. R. 861
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
AND RESERVED WATER OF THE COMMITTEE ON
ENERGY AND NATURAL RESOURCES - UNITED STATES SENATE

Mr. Chairman and Members of the Committee:

My name is M. Scott Johnson, and I am here representing the Potomac Appalachian Trail Club. We appreciate this opportunity to address this Committee and state our strong support for passage of H.R. 861.

The PATC was founded in 1927 to build and maintain the Appalachian Trail in northern Virginia, Maryland, and southern Pennsylvania. Since that time, we have grown from the original handfull of founders to over 3,100 members. Activities of the Club include construction and maintenance of trails and trail side shelters, signing and blazing, publishing comprehensive maps and guidebooks and providing information and assistance to hikers. Unlike many volunteer programs, the PATC, and its associated Clubs in the Appalachian Trail Conference, perform the planning, management, and administrative functions necessary to run the extensive trails, shelters, and information programs. These volunteers contribute tens of thousands of work hours each year paying their own expenses in addition to holding full time jobs.

The success of these volunteers is measured principally in the personal satisfaction these endeavors give the individual.

Nonetheless, the statistics are illustrative of what volunteers can accomplish. The PATC maintains over 700 miles of public hiking trails in Virginia, West Virginia, Pennsylvania, Maryland, and the District of Columbia. These trails include 240 miles of the Appalachian Trail, 140 miles of the Big Blue Trail (conceived, planned, and build by the Club), 200 miles of trails in Shenandoah National Park, and 25 miles in the metropolitan Washington area. These works are carried on in close cooperation with all levels of government, particularly the Park Service and Forest Service. The PATC maintains trails in seven units of the National Park System, one national forest, and several state parks. It is with this historical and existing involvement in public outdoor recreation that the PATC supports H.R. 861.

The National Trails System has grown commensurate with the public's support for its several components. This growth reflects the growing popularity of hiking and its compatibility with other uses of the public parks and forests. The additional designations of scenic trails and study trails provided in H.R. 861 will enhance the existing and potential National Trails System.

As the on-the-ground managers of these trails, we are particularly supportive of the generic provisions of the bill designed to promote volunteerism. While we have accomplished much on our own, the overall achievements along the

Appalachian Trail could not have been accomplished without government cooperation. H.R. 861 recognizes that government can facilitate volunteer efforts without significant expenditures of personnel or money.

H.R. 861 has land related amendments. One amendment at Section 207(d) provides incentive for the Park Service and Forest Service to use innovative land acquisition techniques to save money and better satisfy the needs of private landowners. Section 207(k) will facilitate the donation of trail and conservation easements, particularly in expanding the role of nonprofit organizations as grantees of such easements. This easement provision logically follows from the tax incentives passed in the Tax Treatment Extension Act of 1980 (P.L. 96-541).

Although these remarks have been brief, we strongly support H.R. 861 and urge it be enacted into law.

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions or furnish additional information.

Senator WALLOP. Thank you. I want to thank you, all three, for the statements you have made.

Mr. Startzell, let me just ask you or any of the three of you, you are all experienced in it, section 207(f)(3) encourages the Secretaries to cooperate with State and local governments to protect private landowners on trespass, private property damage as well as personal liability.

Can you give me any examples or list any examples of current laws in operation or do you have any suggestions that anything in addition might be done to maintain what is presently very reasonable relations along these and what we hope to protect at least that and perhaps even better.

Mr. STARTZELL. JoAnn may be familiar with New York provisions. Probably the best example that comes to mind, Mr. Chairman, I believe there are one or more laws in the State of Vermont that do extend some coverage to landowners who make their lands available for trail purposes, such as snowmobilers and so forth.

We would be happy to submit that to the committee for your information.

Senator WALLOP. I would really appreciate it and as I said I did not want to delay this bill on account of that, but if there is something that we can do at the same time, I believe it is important.

Clearly, we cannot do anything about a State trail system or in a State park or anything but if something receives designation as a national trail, and thereby receive some national blessing and attraction by virtue of it, we ought to do what we can to protect the relationships between the landowners who are both neighbors and hosts to these trails.

Mr. STARTZELL. Thank you for bringing it up. I think we all intended to speak to that provision. I think we very much endorse and indeed I think we do speak to it in our written testimony.

Senator WALLOP. I know that you will endorse it. What I am seeking is if there is an enhancement to it that is within reach, given a reasonable timeframe.

Thank you all very much. I appreciate your coming.

Next is a panel. Mr. Paul Pritchard, president of the American Hiking Association, Washington, D.C.; Jeanette Fitzwilliams, National Trails Council of Alexandria, Va.; Thomas Deans, executive director of the Appalachian Mountain Club, Boston, Mass.; Ron Strickland, president of the Pacific Northwest Trails Association, Seattle, Wash.; and Louise Marshall, Sign Post Trails Association, Lynwood, Wash.

And I would ask you panelists if you could indulge me as well for the witnesses who are coming on the other bills, so we might try to get all of our witnesses heard.

Mr. Pritchard.

STATEMENT OF WILLIAM KEMSLEY, JR., GREENWICH, CONN., ON BEHALF OF PAUL C. PRITCHARD, PRESIDENT, NATIONAL PARKS AND CONSERVATION ASSOCIATION AND THE AMERICAN HIKING ASSOCIATION, WASHINGTON, D.C.

Mr. KEMSLEY. Mr. Chairman, I am William Kemsley, Jr., of Greenwich, Conn., here representing Paul Pritchard today.

Senator WALLOP. By all means. Thank you, sir.

Mr. KEMSLEY. It is a privilege to be here with you and with the committee members today to express our support on behalf of H.R. 861. I am here representing Paul, who is the president of the National Parks and Conservation Association, as well as the president of the American Hiking Society.

We have both submitted our written testimony and today I would like to highlight a couple of the points that are in that testimony and I will try to be brief.

I am the founder and original editor of Backpacker Magazine as well. And with Mr. Pritchard and with Mr. Jim Kern, the founder of the Florida Trail Association, we are the original founders of the American Hiking Society which is the only national association of hikers in the Nation.

I am here representing that organization in support of the bill and I am also here to express the support of the National Park and Conservation Association, the Sierra Club, the Wilderness Society and the Friends of the Earth.

We would like to point out that the bill has received overwhelming public and congressional support and we would like to point out, of course, that the bill will facilitate the building and maintenance of national trails primarily by enabling a wider use of volunteers by the Federal land agencies at little public expense.

The bill will also facilitate the coordination of Federal, State and private efforts to develop and maintain trails. And, of course, as has been pointed out here earlier, the bill designates three national scenic trails and proposes the study of six more.

Mr. Chairman, we strongly support H.R. 861 and respectfully urge the subcommittee to act favorably on it. We appreciate the opportunity to testify on its behalf.

[The prepared statements of Mr. Pritchard and Mr. Kemsley and a subsequent submittal follow:]

STATEMENT OF
Paul C. Pritchard
President
National Parks & Conservation Association
before the
Subcommittee on Public Lands and Reserved Water
U.S. Senate
on H.R. 861
August 4, 1982

Mr. Chairman:

It is an honor to be with you and the committee to express the support of the National Parks & Conservation Association, the American Hiking Society, the Wilderness Society, the Friends of the Earth, and the Sierra Club for H.R. 861, the National Trails System Act amendments of 1981.

I speak from personal experience about this bill. I served as the Executive Director of the Appalachin Trail Conference, and helped found the American Hiking Society. I now serve as President of the American Hiking Society and President of NPCA.

The National Trails System may be our country's greatest contribution to those who wish to appreciate the unspoiled natural resources os this nation. These trails provide enjoyment and recreation to millions of people each year. In an age when Americans are beginning to adapt to viewing the scenery through the artificial screen of an automobile window, trails provide access to a greater involvement with the natural environment. Best of all, our National Trails System is constructed to provide recreation for the frail as well as the strong nature lover. One does not need to be an experienced hiker or backpacker to enjoy the splendors of our natural resources.

H.R. 861 amends the National Trails System Act of 1968 which created the management plan of the National Trails System. Since the passage of this Act, many new ideas have been proposed for the purpose of identifying trail routes for study, for designating new trails in the National Trails System, and for further encouraging and assisting volunteer citizen involvement in the advancement of the nation's trail development program. Many of these recommendations are contained in the proposed legislation.

The amendments to the National Trails System Act introduced in the previous Congress had overwhelming public and congressional support. The bill was the culmination of many months of consultations between government officials, congressional staff, state trail planners and conservation organizations in an attempt to strengthen the National Trails System Act and make it more responsive to the needs of trail users and more effective in authorizing and constructing new trails. Passed twice by the House by a significant majority, the bill was greeted by similar approval in the Senate. Unfortunately, a Senate deadline prevented its final passage. Outside the Congress the bill was supported by virtually every trails club in the country. The bill contained benefits for all groups with an interest in trails; motorized trail groups joined the trail clubs to give the bill their strong support.

H.R. 861 differs to a minor degree from the legislation considered by the 96th Congress. The essential proposals of the original bill have been left intact while details, such as the definition of trail use of the amount or funding a specific trail project will receive, have been modified. The bill will facilitate the building of more trails at considerably reduced costs to U.S. taxpayers by amending the currently expensive and lengthy processes of trail designation and allocating trail construction responsibilities to groups outside the federal government. In summary, we believe the passage of H.R. 861 would mean significant improvements in our National Trail System and consequently important benefits for those who wish to enjoy our nation's resources first hand.

A substantial amendment to the National Trail Systems Act contained within H.R. 861 is a provision to streamline the currently expensive and time-consuming trail/study designation process. This amendment includes an assurance that even if a trail does not qualify for national designation, its historic features can be protected and segments of its proposed route may still be developed. This provision alone could reduce the time required for one study of a non-qualifying trail from the current average of six years to six months and save considerable amounts of funding.

In the past, the coordination of the federal, state and private efforts has posed a stumbling block to the process of trail development and maintenance. To correct this, the bill includes a provision to strengthen the existing cooperative agreement authorities between federal agencies and non-federal interests to enable individuals, private organizations, and landowners to operate, maintain and develop trails within the national system. Such agreements include limited financial assistance and liability protection.

Private landowners will be encouraged to allow trails across their lands by a provision that assists the efforts of state and local governments in developing proposals that would limit a private landowner's liability for injuries to trail users and property damage caused by irresponsible trail use.

In addition to these procedural changes in the National Trails System, the bill also-proposes several other amendments which we strongly support: the designation of three national scenic trails--the Natchez Trace, Potomac Heritage, and Florida. Six trails are submitted for study; Juan Bautista de Anza, Trail of Tears, Illinois, Jedediah Smith, the General Cook Trail and the Beale Wagon Road.

In summary, we strongly support H.R. 861 and urge the Subcommittee to act expeditiously on this legislation.

We appreciate the opportunity to testify on H.R. 861 and would be happy to answer any questions.

CHAIRMAN WALLOP, MEMBERS OF THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

I AM WILLIAM KEMSLEY, JR. OF GREENWICH CONNECTICUT FOUNDER AND PAST CHAIRMAN OF THE AMERICAN HIKING SOCIETY, THE ONLY NATIONAL ORGANIZATION OF HIKERS.

I AM HERE TODAY TO SPEAK IN SUPPORT OF HR 861, A BILL PROPOSING AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT OF 1968. MY PRIMARY INTEREST IN THIS BILL IS AS IT RELATES TO HIKING AND BACKPACKING TRAILS. I HAVE USED THE NATION'S TRAIL SYSTEM FOR THESE PURPOSES OVER THE PAST 45 YEARS. I AM ALSO INTERESTED IN THE TRAILS FOR OTHER RECREATIONAL USES THAT I HAVE PARTICIPATED IN ON A REGULAR BASIS OVER A SHORTER NUMBER OF YEARS IN THE MORE RECENT PAST. SPECIFICALLY, I AM INTERESTED IN TRAILS FOR FOUR-WHEEL DRIVE VEHICLES, SNOWMOBILES AND HORSES.

THE BILL UNDER CONSIDERATION HAS THREE PRIMARY ASPECTS THAT I BELIEVE TO HAVE MAJOR SIGNIFICANCE FOR OUR NATIONAL TRAIL SYSTEM:

FIRST, THE BILL WOULD ENABLE FEDERAL LAND AGENCIES A WIDER USE OF VOLUNTEERS FOR TRAIL WORK. AS AN ACTIVE DIRECTOR OF THE AMERICAN HIKING SOCIETY I CAN ASSURE YOU THAT THERE ARE MORE HIKERS WILLING TO VOLUNTEER THEIR TIME AND ENERGIES IN BUILDING AND MAINTAIN TRAILS THAN THERE ARE CURRENTLY OPPORTUNITES AVAILABLE FOR THEM TO WORK. THE BILL WOULD PRIVE THE MECHANISM FOR THE FOREST SERVICE AND THE PARK SERVICE MAINLY TO UTILIZE MORE VOLUNTEERS FOR THIS WORK.

SECONDLY, THE ACT WOULD PROVIDE SOME PROTECTION FOR PRIVATE LAND OWNERS WHO PERMIT PUBLIC TRAILS TO CROSS THEIR LANDS FROM TRESPASS AND UNREASONABLE PERSONAL LIABILITY. HENCE, IT WOULD MAKE IT MORE ATTRATIVE FOR PRIVATE LAND OWNERS TO GRANT PERMISSION FOR TRAILS TO BE BUILT ON THEIR LANDS.

THIRLY, IT PROVIDES A MECHANISM FOR EASIER EXCHANGES OF LANDS BETWEEEN PRIVATE LAND HOLDERS AND FEDERAL AGENCIES FOR THE PURPOSE OF GIVING INTEGRITY TO CERTAIN SCENIC AND HISTORIC TRAILS.

IN ADDITION TO THESE IMPORTANT TECHNICAL ENABLING MEASURES, THE BILL INCLUDES A NUMBER OF NEW NATIONAL SCENIC, RECREATIONAL AND HISTORIC TRAIL DESIGNATIONS. ALL OF THESE TRAILS WOULD BE A GREAT BENEFIT TO THE TRAILS USERS OF THE NATION.

FROM MY UNDERSTANDING THERE IS AMOST NO FUNDING REQUIRED ON THIS BILL.

MAY I MOST RESPECTFULLY REQUEST THE MEMBERS OF THIS SUBCOMMITTEE TO ACT FAVORABLY ON HR 861 THAT IT MAY BE ENACTED INTO LAW IN THIS CURRENT SESSION OF THE SENATE.

WILLIAM G. KEMSLEY, JR.
176 BEDFORD ROAD
GREENWICH, CONNECTICUT 06830

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August 31, 1982

Dear Senator Wallop,

Following your Subcommittee hearing on the Trails Bill (H.R. 861) on August 4, I inquired to see what has been the policy of the National Park Service regarding protecting landowners from trespass, vandalism and unreasonable personal liability when their lands are crossed by trails or are near to them.

Mr. David A. Richie of the National Park Service assigned to the Appalachian Trail project. He tells me that liability has not been an issue in landowner negotiations for that project. But, that they do have a pamphlet which is patterned pretty much after one used by the Vermont Natural Resources Council. I have enclosed a copy of that pamphlet for your information.

I hope this will be helpful. Again, thanks so much for your concern and interest in trails.

Respectfully,

William Kemsley

Honorable Malcom Wallop
United States Senator
204 Russell Senate Office Building
Washington, D.C. 20510

RECREATIONAL USE OF LAND AND LANDOWNERS' LIABILITY

Landowners who sell a portion of their land or grant an easement to be used for the Appalachian Trail are becoming concerned that they can be sued if somebody is injured on their land. They read about high verdicts awarded by judges and juries in serious injury cases and wonder if they too may be liable. The purpose of this leaflet is to explain the laws on liability of landowners to hikers and to suggest an easy and usually inexpensive method by which landowners can protect themselves.

THE GENERAL RULES ON LIABILITY

The rules on landowner liability come from ancient English law. They have been adopted, with some changes, by the American courts. Landowner liability depends primarily on two factors. The first is the failure of the landowner to meet his duty of care to protect a visitor from injury. An unintentional failure to meet this duty of care is called negligence. If a landowner is negligent, and if his negligence causes an injury, the landowner may be liable.

The second factor is the status of the person using the land, for the status of the visitor determines what the landowner's duty of care is. Visitors fall into three categories: trespassers, licensees, and invitees. The duty of the landowner to guard against injury varies with each type of visitor. For example, a landowner has a high duty of care to protect an "invitee," but a very low duty of care toward a "trespasser." Legislation passed in Appalachian Trail states in the 1960's generally treats hikers and other recreational users in the same way that the common law treats "trespassers."

LIABILITY RULES ALONG THE TRAIL

A trespasser is a person who comes onto the land without the permission of the landowner. (Note: The term "trespasser" is not used in a criminal sense, but only for its technical meaning that no permission has been given.) If the owner is aware of the trespasser's presence, he must not injure him either intentionally or through "active" negligence. However, the landowner is under no duty to warn the trespasser of any hidden dangers on the land, such as an old well or rotted sawdust pile. The trespasser must accept the land as it exists, and if he injures himself, the landowner will not be liable. The landowner has no duty to keep the premises safe.

A licensee is a person who has received the owner's permission to use the land. In this case, the landowner must either repair any hidden dangers or warn the visitor about them. There is no duty, however, to warn against any hazards which are obvious or which the visitor is not expected to encounter.

The final category of land users is the invitee or business visitor. People who have paid a fee to use the property, such as skiers at a ski resort, are "invitees." Here, the owner has a stricter duty of care and must maintain the property in a reasonably safe condition.

Generally, users of the Appalachian Trail are either "licensees" or "trespassers" with regard to the adjacent landowner. However, because of laws which have been enacted in virtually all of the states through which the Appalachian Trail passes, "licensees" are treated as "trespassers" in certain liability situations involving recreational use. For example, Pennsylvania Title 68 P.S. Sec. 477-3 reads as follows:

> ".... an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, or structure, or activity on such premises to persons entering for such purposes."

The purpose of these laws is to encourage owners to make their land available for recreation by giving them added protection against liability suits. In cases where the landowner is not charging a fee or receiving other compensation, this statute essentially treats all recreational users as "trespassers," whether or not they have received permission to use the land. It is important to note that the law does not apply to recreational businesses. In these cases, the users are still classified as "invitees."

THE PROBLEM OF LAWSUITS AND TWO RECOMMENDATIONS

Since most landowners have, under current law, only a minimal duty to protect recreational users, the chances that a private landowner will be held liable for an injury is very slight. Still, the possibility exists. Under certain circumstances, a landowner might be found to have been "actively" negligent, guilty of wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity, and therefore responsible for an injury. There is also a possibility that the state courts could change the rules concerning a landowner's duty of care toward a trespasser. This has already occurred in California, and while it seems unlikely that other states will follow suit in the near future, they may do so eventually.

Furthermore, even if the chance of being liable is very small, the chance of being sued is less so. Should a lawsuit be filed, the landowner must pay the cost of defense. Even if he ultimately wins, these costs could run into hundreds or even thousands of dollars.

What can be done? First, the landowner should attempt to remove any known hazards which exist on the property, or post adequate warning signs nearby. By reducing the number of hazards which could be encountered, the owner reduces the chances of an accident and subsequent suit. This is called "risk management."

Second, the landowner should carry liability insurance, since if a policy is in force, the insurance company will not only pay for the liability (up to the policy limits), but also the cost of defense. Except in cases where the landowner is operating a recreational business, insurance rates are surprisingly low. A number of companies offer liability insurance coverage to landowners for less than $50.00 per year for several hundred acres of land.

Furthermore, most landowners will discover that they already have extensive liability coverage under their household insurance. Most homeowner insurance policies cover not only the household and the surrounding property, but also other vacant land owned by the policy holder. This means that no additional expenditure for liability insurance may be necessary!

No landowner should assume automatically that he is covered against every liability situation merely because he owns a property insurance policy. Each landowner should consult with his insurance agent and attorney to determine the extent and adequacy of the coverage. Where doubt exists, a special "endorsement" can be added to the policy. In this way, the landowner can protect both his financial interests and peace of mind, while still making more land available for recreation.

SOME QUESTIONS FREQUENTLY ASKED BY LANDOWNERS ABOUT LIABILITY

If a hiker gets injured while on my land, will I be liable?

If the injury is caused by an intentional or negligent act of the landowner (such as shooting a gun in the direction of the person, knowing that he is there), the landowner may be liable. However, if the accident is caused by somebody else or by a concealed hazard on the land, the likelihood that the owner will be liable is slight. This is because the law generally treats all recreational users who are getting free use of the land in a similar way to "trespassers," regardless of whether they have been given permission to be there.

If I sell a portion of my land or grant an easement to the National Park Service to be used for the Appalachian Trail and a hiker wanders off the Trail and injures himself on my property, will I be liable?

No, unless you are actively negligent or if you wilfully or maliciously fail to guard or warn against hazards, the hiker will be considered a trespasser.

Should I post my land in order to reduce the chances I could be liable?

Posting generally will not help. A recreational user on your land will be treated in a similar way to a "trespasser" for liability purposes, regardless of whether you have posted or not. So there is no advantage in posting as far as liability is concerned.

Why can't landowners be given complete protection against liability?

They already have very broad immunities against claims by people using their land for recreation. All the landowner is required to do is not intentionally injure another person, not be guilty of wilful or malicious failure to guard or warn against hazards, and act in a reasonably careful manner when he knows other people are near. People cannot expect to be held free from responsibility in all cases.

Is insurance coverage against liability expensive?

No, unless you are in the recreation business. Coverage may be provided as part of the Standard Homeowner's Insurance Policy at no extra charge. The additional cost of increasing the policy limits for liability claims is not substantial. Even a separate policy is inexpensive.

Who will pay the attorney fees and court costs if I am sued?

If you have insurance, the insurance company pays. If you don't, you do.

If I get sued, will my insurance cover me?

The answer depends upon the contents of the insurance policy. However, most homeowners' insurance policies, the landowner has extensive liability coverage (within policy limits, of course). This coverage may even extend to vacant land owned by the policy owner in an area separate from his residence.

What can I do to reduce the chances that I will be sued?

First, if there are any hazards on your property which might be encountered by hikers, either remove the hazard or put up a sign warning of its presence. Landowners should pay specific attention to single strand barbwires, rotted wood bridges and small chain gates which can be particularly hazardous.

Second, if you do not have insurance, buy a policy giving liability coverage. If you already have insurance, consult with your insurance agent and attorney to determine whether your existing policy is adequate in its coverage of all your landholdings and in its policy limits. Adequate coverage is not expensive, and is definitely worth the price.

Senator **Wallop**. Thank you, sir. Thank you very much. Jeannette Fitzwilliams.

STATEMENT OF JEANETTE FITZWILLIAMS, PRESIDENT, NATIONAL TRAILS COUNCIL, ALEXANDRIA, VA.

Ms. **Fitzwilliams**. I will skip a little bit, if I might. I am Jeanette Fitzwilliams, president of the National Trails Council, which is composed of individuals, clubs and agencies from all over the country, concerned with all types of trails, land and water; urban, rural, desert and mountain; motorized and nonmotorized and including all types of expertise, users, volunteer maintainers, planners, managers, researchers and landowners.

For some time now, many of us have realized that leadership was needed to formulate and implement a new trails strategy. I might interject that many of the points you have raised are things that we feel have to be addressed and that something new has to be done.

Ordinarily, we do not testify. We keep people informed. But H.R. 861 is important to all of us. Sections of it are the result of the Appalachian Trail experience and are needed to improve acquisition and management of national scenic or historic trails. Other sections such as the requirement for a trails plan and the section on abandoned railroads will help us in formulating and implementing new trails strategy.

Further, in this instance, we are here to request that you consider amending H.R. 861 as in two instances. One, we would like you to authorize all Federal agencies and departments to use volunteers. And, second, we would like you to change the date for submission of that first plan from October 1982, which is pretty close, to October 1984 with subsequent reports in even years.

With the Federal, State and local governments having to withdraw funds from trails to meet higher priority needs, it is the clubs and individual users who will have to fill the gap. Annual vegetation growth and erosion do not accommodate themselves to budget deficits. Everyone says use volunteers, but only the Forest Service, National Park Service, Fish and Wildlife Service and the National Oceanic and Atmospheric Administration are authorized to do so.

Much of the federally owned land suitable for trails is in the hands of the Corps of Engineers, TVA, BLM and the Army, Navy and Air Force. There are probably others. But none of these agencies can use volunteers. The heart of the problem, of course, is the question of tort and workmen's compensation liability protection.

We ask that this protection be authorized for all Government agencies and all types of activity suitable for the use of volunteers, not just trail activities. We ourselves are primarily concerned with trails, but we mean trails in the broadest sense. Volunteering is a recreational activity that includes not only planning, construction and maintenance, but also interpretation, education, research, development of alternative means of transportation, promotion of trail use as well as recreation—for health as well as recreation, supporting the beneficial effects of trails on communities.

This can involve programs not only of the land managing agencies but of the Departments of Transportation, Human Resources, Housing and Urban Development only to name a few.

Our volunteer amendment also does something else. There are two types of volunteers; The individual who offers his services to a specific agency, and the club that carries out its own project which may involve many agencies. Current legislation only specifically covers the first type, the individual volunteer.

The current provisions of H.R. 861 only extends coverage to clubs for the Forest Service and the National Park Service, leaving the others out. Our proposal provides authorization for use of volunteer services of both individuals and clubs for all agencies, and I might reiterate for all kinds of things suitable for volunteers.

In many respects from the point of view of the agency, the clubs are more effective—and I would skip that.

Our second request asks that the first trails plan be submitted to Congress in October 1984 and in even years thereafter. The requirement that a plan be submitted is excellent as one is very badly needed. A high proportion of all trails of this country are influenced by Federal action. They may be on Federal land. They may be financed by the Land and Water Conservation Fund or they may owe their existence to authorization provided by some Federal law as in the case of rails to trails.

A plan is needed to bring these various elements into proper relation to each other and with all other trails. May I interject that this plan as we see it is not just for national scenic and historic trails. It shows how they relate to all trails and how all of those trails relate to the Federal Government.

This provision is even more excellent because it requires consultation with the States and the trails community. Trails are created and maintained by the active support and participation of the people and agencies where they are located. Trails are created not by laws but by people. This provision will do much to put responsibility where it belongs and where it is most effective.

I think that the experience of the AT shows that the local people have picked up a lot of these things. But much as we need the plan, it will take time to provide it and it must truly be a joint product of the Feds, the States, and the trails community.

The infrastructure needed to provide the recommendations has to be developed. The knowledge about trails in the various States is extremely uneven. By 1984 we can make a beginning. I also suggest 1984 for purely selfish reasons and even years thereafter and that is because the meetings of the National Trails Council are held in 1984 and even years. And it is at these meetings that many of the recommendations of the trails community, the States and the Feds can be brought together and finalized.

Thank you for this opportunity to testify.

[The prepared statement of Ms. Fitzwilliams follows:]

NATIONAL TRAILS COUNCIL

Ms. Jeanette Fitzwilliams
13 W. Maple Street
Alexandria, Virginia 22301
(703) 548-7480

August 4, 1982

TESTIMONY OF JEANNETTE FITZWILLIAMS, PRESIDENT
BEFORE
SENATE PUBLIC LANDS & RESERVED WATER SUBCOMMITTEE

I am Jeannette Fitzwilliams, president of the National Trails Council. The National Trails Council is composed of individuals, clubs and agencies from all over the country concerned with all types of trails--land and water; urban, rural, desert and mountain; motorized and nonmotorized--and including all types of expertise--users, volunteer maintainers, planners, managers, researcher and landowners.

NTC was formed to continue the exchange of ideas started at the First National Trails Symposium in 1971. For some time now, many of us have realized that leadership was needed to formulate and implement a new trails strategy. The current deficit situation makes this even more crucial. Ordinarily, NTC does not testify. Its role is to inform the trails community of what is happening so each individual, club or agency can speak for itself. But HR861 is important to all of us. Sections of it are the result of the Appalachian Trail experience and are needed to improve acquisition and management of National Scenic or Historic Trails. Other sections such as the requirement for a trails plan and the section on abandoned railroads will help us in formulating and implementing the new trails strategy.

Further, in this instance, we are here to request that you consider amending HR861 as it now stands in 2 instances: 1) authorize ALL federal agencies and departments to use volunteers and 2) change the date for submission of the first plan to Oct. 1984 with subsequent reports in even years.

With the federal, state and local governments having to withdraw funds from trails to meet higher priority needs, it is the clubs and individual users who will have to fill the gap. Annual vegetation growth and erosion do not accommodate themselves to budget deficits. Everyone says use volunteers but only the Forest Service, National Park Service, Fish & Wildlife Service and the National Oceanic and Atmospheric Administration are authorized to do so. Much of the federally owned land suitable for trails is in the hands of the Corps of Engineers, TVA, BLM and the Armny, Navy and Air Force. But none of these agencies can use volunteers. The heart of the problem, of course, is the question of tort and workmens compensation liability protection. We ask that this protection be authorized for ALL government agencies and for ALL types of activity suitable for the use of volunteers, not just trail activities. We, ourselves, are primarily concerned with trails but we mean trails in the broadest sense. Volunteering is a recreational acitivity that includes not only planning, construction and maintenance but also interpretation, education, research, development of alternative means of transportation, promotion of trail use for health as well as recreation and supporting the benficial effects of trails on communities. This may involve programs not only of land owning agencies but of the Departments of Transportation, Human Resources, Housing and Urban Development to name only a few.

Our volunteer amendment also does something else. There are two types of volunteers--the individual who offers his services to a specific agency and the club that carries out its own project which may involve many agencies. Current legislation only specifically covers the first type--the individual volunteer. The current provisions of HR861 only extends coverage to clubs for the Forest Service and the National Park Service. Our proposal provides authorization for use of volunteer services of both individuals and clubs for all agencies.

In many respects from the point of view of the agency, the services of the club are the more cost efficient since most of the planning, paperwork and supervision are done by the club and the agency has to deal with only one person instead of many. From the point of view of the trails community, the club is also frequently the more desirable since the needed trail may extend beyond the boundaries of the agency and because the resulting trail may more closely meet the needs of the users.

Our second request asks that the first trails plan be submitted to Congress Oct. 1984 and in even years thereafter. The requirement that a plan be submitted is excellent as one is badly needed. A high proportion of ALL trails of this country are influenced by federal action--they may be on federal land, financed by the Land and Water Conservation Fund or owe their existence to authorization provided by some federal law as in the case of Rails to Trails. A plan is needed to bring these various elements into proper relation to each other and with all other trails.

This provision is even more excellent because it requires consultation with the states and trails community. Trails are created and maintained by the active support and participation of the people and agencies where they are located. Trails are created not by laws but by people. This provision will do much to put responsibility where it belongs and where it is most effective

But much as we need the plan, it will take time to provide it and it must truly be a joint product of the feds, the states and the trails community. The infrastructure needed to provide recommendations has to be developed. The knowledge about trails in the various states is very uneven. By 1984 we can probably make a beginning. I also suggest 1984 and even years because that is when the meetings of the National Trails Council are held and it is at these meetings that many of the recommendations of the trails community, the states and the feds can be brought together and finalized. Thank you for this opportunity to testify.

Senator **WALLOP**. Thank you very much for your excellent testimony.

Mr. Deans.

STATEMENT OF THOMAS S. DEANS, EXECUTIVE DIRECTOR, APPALACHIAN MOUNTAIN CLUB, BOSTON, MASS.

Mr. **DEANS**. Mr. Chairman, I am Thomas Deans, executive director of the Appalachian Mountain Club. I am pleased to bring the strong support of the 27,000 members of the Appalachian Mountain Club for the prompt passage of H.R. 861.

I will not read my full statement and hope it will be entered into the record and any additional comments we may have.

Senator **WALLOP**. It will be by all means.

Mr. **DEANS**. Thank you. The Appalachian Mountain Club is the oldest and the largest outdoor recreation conservation organization in the country. For the past 107 years, our members and supporters have provided a wide variety of volunteer services to outdoor users.

Today, the AMC maintains over 1,000 miles of hiking, trails, a system of shelters and campgrounds, a unique public hut system in the White Mountains of New Hampshire and conducts a variety of educational and land use planning activities.

The AMC has long been an advocate of a greater roll for the nonprofit, volunteer organizations and outdoor recreational services. In 1978 we worked with the HCRS on looking at the expanded role of nonprofit organizations in recreation management. We belive that the amendments to the National Trails System Act contain some highly desirable modifications and additions to the original Trails Act.

Specifically, we are pleased that the bill includes provisions that authorize the Secretary of the Interior and Agriculture to assist volunteer groups in the construction and maintenance of trails on both public and private lands, that it expands the use of cooperative agreements between the trail managers and landowners and the provision that facilitates land exchanges for trail acquisition.

The bill includes a number of new designations or additions to the national scenic, recreational, and historic trail systems. We support these additions.

Mr. Chairman, there has been a great deal of emphasis today placed on the expanded role of volunteers and nonprofit organizations, that they must play in the future delivery of our recreational services. Your passage of H.R. 861 will help to insure that we maximize the potential of volunteers as significant partners to our public managers.

The trail volunteers of this country need this additional legislative encouragement. Thank you very much.

[The prepared statement of Mr. Deans follows:]

APPALACHIAN MOUNTAIN CLUB
FIVE JOY STREET BOSTON, MASSACHUSETTS 02108 617-523-0636

STATEMENT OF THOMAS S. DEANS
EXECUTIVE DIRECTOR OF THE APPALACHIAN MOUNTAIN CLUB

ON H.R. 861, NATIONAL TRAILS ACT AMENDMENT

TO THE SUBCOMMITTEE ON PUBLIC LAND AND RESERVED WATER,
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

WASHINGTON, D.C. AUGUST 4, 1982

Mr. Chairman, Members of the Committee, my name is Thomas S. Deans, of Intervale, New Hampshire, Executive Director of the Appalachian Mountain Club. I am pleased to bring the strong support of the 27,000 members of A.M.C. for the prompt passage of H.R. 861, an amendment to the National Trails System Act.

The Appalachian Mountain Club is the oldest and largest outdoor recreation and conservation organization in the nation. For the past 107 years our members and supporters have provided a wide variety of volunteer services to the outdoor user. Today the A.M.C. maintains over 1,000 miles of hiking trails, a system of backcountry shelters and campgrounds, a unique public hut system in the White Mountains of New Hampshire and a vast array of educational and land use planning activities.

Just recently the A.M.C. began a national three-year project designed to promote increased citizen involvement in planning, creating, and maintaining America's outdoor recreation resources. Funded by the Richard King Mellon Foundation in Pittsburgh, the National Volunteer Project will support the development of local stewardship for publicly used land. Our long-term goal is to leave behind at least six self-sustaining partnerships among land managers, volunteer organizations, and other supporters of this concept.

The A.M.C. has long been an advocate of a greater role for our non-profit volunteer organizations in outdoor recreation activities. We believe that the amendment to the National Trails System Act, H.R. 861, contains some highly desirable modifications and additions to the original Trails Act. Specifically, the bill includes provision that authorize the Secretaries of Interior and Agriculture to assist volunteer groups in the construction and maintenance of trails on both public and private land, expands the use of cooperative agreements between trail managers and landowners, and facilitates land exchanges for Trail acquisitions.

The bill also includes a number of new designations or additions to the national scenic, recreation and historic trail system. These are the Florida Trail, the Sante Fe Trail, the Potomac Heritage Trail, the Nachez Trace Trail, the Trail of Tears, the Illinois Trail, the Jedediah Smith Trail, the General Crook Trail, and the Beale Wagon Road. The Appalachian Mountain Club supports the addition to the bill of all of these trails.

There is a great deal of emphasis placed today on the expanded role that volunteers and non-profit organizations must play in the future delivery of our public services. Your passage of H.R. 861 will help to ensure that we maximize the potential of volunteers as significant partners with our public land managers. The trail volunteers of the country need this legislation encouragement.

Thank you very much.

Senator **Wallop**. Thank you very much, Mr. Deans.

Dr. Strickland.

STATEMENT OF DR. RONALD G. STRICKLAND, DIRECTOR, PACIFIC NORTHWEST TRAILS ASSOCIATION, SEATTLE WASH.

Dr. **Strickland**. Thank you, Mr. Chairman. I do on behalf of Pacific Northwest Trails Association want tc urge you to support H.R. 861 and in particular, we are anxious that H.R. 861 be amended to include another long distance trail, the Pacific Northwest Trail, which goes from Glacier National Park through Olympic National Park along the Canadian border of the northwest.

Senator **Wallop**. Could I ask you if you are suggesting that as a designation or a study?

Dr. **Strickland**. As a designation. It already has been studied. And this trail is included in the bill called S. 2769, introduced by Senator Symms. The Pacific Northwest Trail includes Montana, Idaho, and the State of Washington.

I am delighted that much of the testimony has touched upon the Appalachian Trail and the more than 50-year tradition of the Appalachian Trail, because our trail out in the West is exactly based on that tradition, the idea of using volunteers to develop a long distance trail.

In our case, we have already made very good progress in that direction. We don't have as much history to back us up as the Appalachian Trail people do. Our group only dates from the midseventies but already we have located a route. We have volunteers out working on it and we have considerable support from civic groups and outdoor clubs and others in the region.

For instance, recently this year the legislator of the State of Washington passed a unanimous resolution in favor of adding the Pacific Northwest Trail to the national trail system. The Pacific Northwest Trail is approximately 1,200 miles long and as I said it goes from the Continental Divide to the Pacific Ocean.

I have submitted a written statement about this and I would be happy to answer any questions.

[The prepared statement of Dr. Strickland follows:]

Energy and Environment Committee hearing
August 4, 1982

S. 2769 - The Pacific Northwest Trail

Statement of Dr. Ronald G. Strickland, Director
The Pacific Northwest Trail Association
(P.O. Box 1048, Seattle, WA 98111)

The Pacific Northwest Trail Association is a Northwest trail user organization which has been developing a 1200-mile foot and horse path across the 1840's Oregon Territory between the Continental Divide and the Pacific Ocean. S. 2769 would add our Trail to the National Trails System and preserve what we consider to be the finest long distance recreation path in all of North America.

S. 2769 contains no appropriation but more importantly it does recognize the leading role of the trail user community in planning and developing this important national resource.

S. 2769 adds to the National Trails System only the federal lands portions of the PNWT (about 80%). No condemnation authority is included in the bill. Subsequent volunteer-developed PNWT sections on non-federal lands may be added through action of local and state governments in cooperation with the Secretary of Agriculture.

The 1980's may be remembered as the Decade of The Volunteer and in no subject is that more true than in recreation. America has a long tradition of volunteer trail development - but primarily back East with famous routes such as the 2,000-mile Appalachian Trail. Our Association has brought trail volunteerism recreation to the Northwest because of our philosophy that users should take direct responsibility for the planning and management of their sport. We are challenging the old Northwest understanding that trails are something developed by government fiat.

Today's Northwest trails grew out of the fire prevention and administrative transportation needs of the U.S. Forest Service during the 1930's. Many of our trails were not developed for recreation at all. And many of them are now completely overgrown because of changed agency needs and new budget priorities. Thus we in the Northwest are left with federal trails which are inadequate for today's and tomorrow's intense public interest in backcountry recreation.

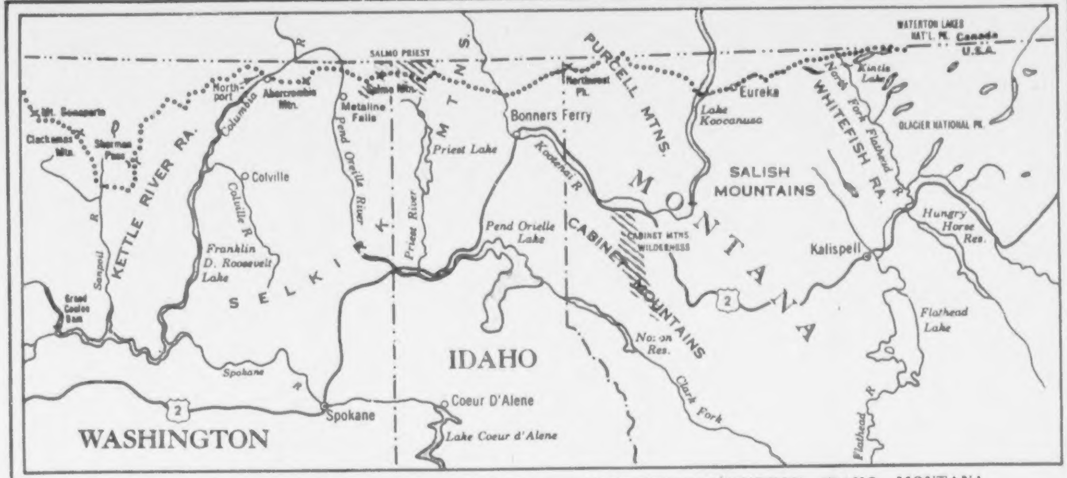
The Pacific Northwest Trail has been located to emphasize the tremendous scenic variety which our region has to offer.. Imagine yourself encountering dripping rainforests, scenic deserts, alpine gardens, lush valleys, saltwater tidepools, and Old West sagelands all on one stupendous route. Imagine walking for 1200 miles westward from the Continental Divide toward the setting sun. Modern Americans have little chance to live traditional frontier life but a trek along the Pacific Northwest Trail recreates that opportunity.

Also, by contributing to tourism it will aid economic recovery in the hard-hit areas of high unemployment along the Canadian border. We have already observed that the Trail visitors are a new source of pride and identity to the PNWT's towns and hamlets.

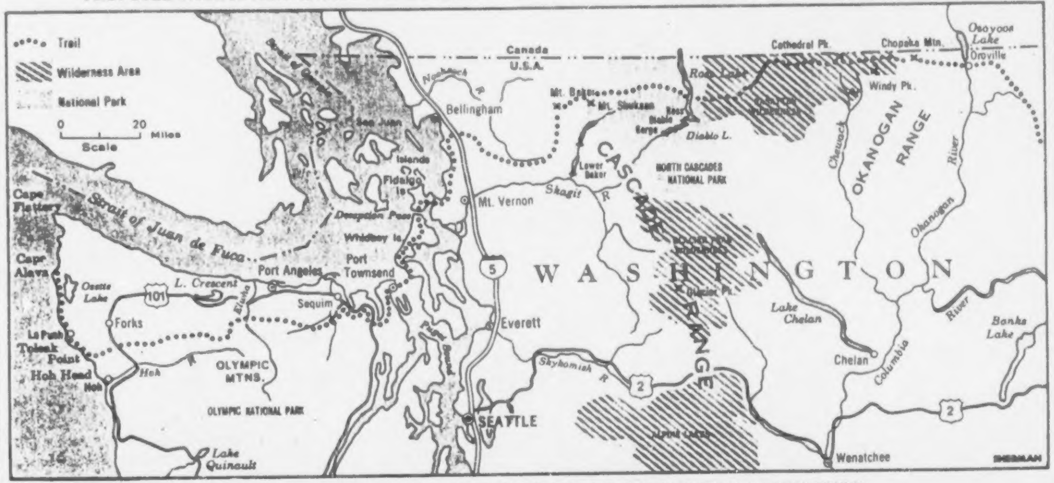
The Pacific Northwest Trail Association is a 501 c 3 non-profit corporation incorporated in the state of Washington. The 57-year old Appalachian Trail Conference is our model and inspiration. We have developed the PNWT route in consultation with local volunteers, land managers, and planners. Currently we are working on the third edition of our guidebook which like all of our work emphasizes our goal of a continuously-marked, environmentally-sound, low impact trail of the highest scenic and educational quality.

The Pacific Northwest Trail has won the support of backpackers throughout the country whether they be daytrippers or "end-to-enders." And - hostelers, Scouts, chambers of commerce, and other civic groups. In addition strong resolutions in favor of "national scenic trail" status for the PNWT have been passed by such groups as the Appalachian Trail Conference, the Federation of Western Outdoor Clubs, and the Washington state legislature. More and more our country will be turning to volunteers to do the trail work which was once a purely governmental responsibility. We in the Pacific Northwest Trail Association are proud to be a part of that exciting trend.

We urge you to amend the House-passed H.R. 861 to include the Pacific Northwest Trail.



PROPOSED PACIFIC NORTHWEST NAT'L SCENIC TRAIL IN NORTHERN WASHINGTON – IDAHO – MONTANA



PROPOSED PACIFIC NORTHWEST NAT'L SCENIC TRAIL IN NORTHERN WASHINGTON

Senator WALLOP. Dr. Strickland, thank you very much. Your statement will be entered into the record in its entirety.

Ms. Marshall.

STATEMENT OF LOUISE MARSHALL, SIGN POST TRAILS ASSOCIATION, LYNWOOD, WASH.

Ms. MARSHALL. My name is Louise Marshall. If you have the written statement there, I do hope you will correct the spelling. My name is a very unfortunate one: if you have inverted the "i" and the "e" you have got Lousie.

Incidentally, my statement is handed to you. Not knowing what some of your concerns are, it is very interesting to me and I would hope to personally follow up on them later and perhaps give you some written statements after I have had a chance to do some research on what your concerns are.

I have started out in my statement with a long statement of all of my qualifications, which are pretty considerable. I am impressed with them. I am also on the Pacific Press Trail Advisory Council and so some of the concerns of your committee are of interest to our advisory council too.

I have traveled across the country, of course, on this occasion in favor of H.R. 861 and to urge you to pass it out of committee. That is really why I am here. Please pass it out to the Senate so we can get it to a vote. The rest of my statement gives you a little picture of how we originally and some of the people in the trails community got together and started to talk about what do we want in the trails amendment; what do we want to amend the Trails Act. We came up with a list of druthers.

Some of them came out in a bill which 4 years ago passed through, or 2 years ago, I guess it was, passed through Congress. It was pretty much those druthers. The bill has been changed some now. There is always some give and take when things go through Congress.

It is not exactly the way we originally planned it, but in some places it is better and in some places it is worse. But it is a pretty good bill and it does a lot in support of trails. I personally feel it would give a great boost to the trails resource. So I urge your committee to pass it forward.

I would like to also respectfully urge you to be cautious about adding the kind of amendments which would kill it, which would just drag it down. Some of the amendments which have been proposed today, sound to me to be very effective. They are real good additions, really thoughtful and appropriate for the bill.

I am hoping you will not attach any just rock bottoms to it that drag it down to the bottom, no cement blocks please. I think that the development of trails is not the most serious problem facing our Nation, surely, but this legislation does strengthen the position of trails, the recreation use of our Nation's natural resources. It strengthens the mental and physical health of our people and in that respect I think it is important.

I urge you to pass it out.

[The prepared statement of Ms. Marshall follows:]

STATEMENT IN SUPPORT OF HR 861 August 4, 1982

My name is Lousie Marshall. I live in Washington State, near Seattle.

I would like to tell you some of my qualifications to appear before you. I am a member of the Mountaineers, a Washington state outdoor club with 10,000 members, and have served on its Board of Trustees. I am a charter member of the American Hiking Society and have served on its Board of Directors and Executive Committee. I served nine years on the Board of Directors of Recreational Equipment Incorporated, the third largest retailer in this field in the United States. I am the publisher of "The Signpost," a magazine for hikers and backpackers. I serve on our state government's Trails Advisory Committee. I have hiked, canoed, bicycled, and skied in many parts of the United States.

I have travelled across the country on this occasion to speak in support of HR 861, and to urge you to pass it out of committee.

One January evening about four years ago a dozen persons familiar with the national picture concerning recreation trails for the muscle-powered traveler gathered around a table here in Washington to do some brainstorming. We thought it was time for our own sort of "oversight review" of the National Trails Act, then about ten years old.

We came up with a lot of little housekeeping items - punctuation changes, clearer wording, and such. Then we got carried away and began to list our "druthers." What would we REALLY LIKE to see in an updated Trails Bill?

The Bill that almost went through Congress in 1980 was pretty much those "druthers." It was the result of that first brainstorming session, plus hours and hours of cooperative effort on the part of the entire community of organizations concerned with trails. Executive directors of organizations in the private sector conferred endlessly with legislative assistants on the Hill, and the National Trails Act Amendments were the result.

Since then Congress has made some adjustments of its own - compromises necessary to get it passed. HR 861 is not now as grand as we had hoped, but it's good enough, and I personally feel it would give a great boost to the trails resource. I urge you to move it forward.

And I respectfully urge you to be cautious about adding amendments which can effectively kill it. You are surely aware of how frustrating it can be to citizens who have worked together as a trails community for a couple of years to get a bill before Congress and then at the last minute have amendments come from outside which block passage.

The development of trails is not the most serious problem facing this nation, or this committee. But trail-related recreation creates health of mind and body and adds immeasurably to the quality of our citizens' lives. This legislation, because it strengthens the position of trails and the recreational use of our nation's natural resources, also strengthens the mental and physical health of our people. Your committee will be acting in a wise and level-headed fashion, if you pass HR 861 out to the Senate floor.

Thank you for this opportunity to be heard.

Louise B. Marshall
16812 36th Avenue West
Lynnwood, WA 98036
206/743-3947

STATEMENT IN OPPOSITION TO S.2769 August 4, 1982

The Committee should know that there exists in the state of Washington substantial opposition to the establishment of a Pacific Northwest Trail as presently proposed. This opposition is at least as strong as the "overwhelming public support" referred to by Senator Symms in his introduction of the bill. It might even, therefor, be represented as "overwhelming informed opposition."

I am authorized to speak against S. 2769 by Olympic Park Associates, North Cascades Conservation Council, The Mountaineers, and Federation of Western Outdoor Clubs.

Two of the reasons for the opposition of these conservation and outdoor recreation organizations are:

1. The route passes through known grizzly denning habitat. To designate a National Scenic Trail through such territory will create additional conflict between humans and bears and will exert additional pressure on this remnant bear population.

2. The route passes through fragile alpine terrain at high elevations in areas presently managed as or designated wilderness. Designation as a National Scenic Trail will draw more users and cause additional wear and tear on high altitude areas that cannot stand heavy use.

Another reason to oppose S. 2769 at this time is that it is essentially an amendment to HR 861, and is the kind of controversial addition which I counsel against in my testimony in favor of HR 861. Your Committee should really study all sides of this bill before acting on it.

Louise B. Marshall

Senator WALLOP. Thank you very much, Ms. Marshall. I assure you we will change the spelling of your name.

With regard to that note of caution that you just laid on us, which I think is a well-chosen caution, I would say to Ms. Fitzwilliams, I understand what you are trying to do and indeed the proof of it, your suggestion that we make the use of volunteers available to all Federal agencies and that we provide them with some protection of workmen's compensation.

The Congress as you know has territorial imperative far in excess of any of the green-bi anthropologists. I don't know what kind of a rangle we might get into with other committees. I will promise you that we will look into it and if we can avoid a major rangle, I approve of where you are trying to go. I think it is a good suggestion.

Ms. FITZWILLIAMS. Might I suggest, sir, that if you don't take the suggestion we make that in addition to the BLM you include the Fish and Wildlife and the others that do come under your committee. I might say that there is similar legislation, Senator Specter's bill, and in the House there are a couple, and it was just the case of which we could get it through first. Because you know we really need it.

The Corps of Engineer things are being closed down for lack of volunteers.

Senator WALLOP. I could not agree with you more. And we will discretely inquire——

Ms. FITZWILLIAMS. I might say I got their OK before we did this.

Senator WALLOP. Yes, and we will certainly look at it from the standpoint of those agencies covered by this committee. I think it is a good suggestion.

Could I just toss something out and get a response from one or several, or all of you? The Administration recommendation was that we not prohibit in a blanket prohibition all of the fees that might be contemplated. Can you react to that?

I tend to be sympathetic that in certain instances, certain places some fees might well be the saving of a trail rather than an inhibition to it. But I invite your comments on it.

Mr. DEANS. I think that we discussed this, Mr. Chairman, and I think we would agree with the Administration on that, that if that section were dropped that is certainly all right with us. I think there is a belief in the trails committee that we have got to look more at the user paying for services received and that is something that we don't want to have any restriction that will impede the agencies looking at the different techniques that may be used, but that is a concept that I think those of us in the trails community would back.

Senator WALLOP. I appreciate that and for one very obvious reason, when we are now faced with budget restraints on the National Park Service and the National Forest Service, it is going to be more and more imperative that district supervisors, park superintendents and others use their employees where they will get the most sort of bank for the buck right away and if this is viewed as being a little bit off or a little bit out of sight or a little bit out of the way or a lower priority, the absence of fees may just contribute—the absence of fees in any instance might just contribute to a neglect that I don't think is probably useful.

Senator Melcher, did you have anything?

Senator MELCHER. No questions. I appreciate the testimony of the witnesses.

Senator WALLOP. I would like to compliment both this panel and the panel that preceded it and thank you for your indulgence in our time schedule. Your testimony is well considered and very useful to the committee.

That completes the two administration witnesses and the two panels on H.R. 861. I will now hear witnesses on S. 894, beginning with Lynn Engdahl, Special Assistant to the Director of BLM, Department of the Interior.

STATEMENT OF LYNN H. ENGDAHL, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEON KABAT, CHIEF, BRANCH OF RIGHT-OF-WAY DEVELOPMENT

Mr. ENGDAHL. Mr. Chairman, I am Lynn Engdahl, Special Assistant to the Director of the Bureau of Land Management. I brought with me our chief of the branch of Right-of-Way Development, Mr. Leon Kabat, primarily to bolster my courage.

We have a short statement, but in the interest of time I would even highlight that.

Senator WALLOP. By all means.

Mr. ENGDAHL. We oppose the enactment of S. 894. The question of the exemption that would be authorized by this bill has been given serious consideration on many occasions. In response to requests for public comments during the development of the rights-of-way regulations issed by the Secretary of the Interior and special use permit regulations issued by the Secretary of Agriculture, many commentors requested that the regulations provide for free use for particular types of use and for certain types of organizations.

Exemptions from the requirements to pay for rights-of-way were specifically requested by rural telephone cooperatives and rural electric cooperatives.

After careful and thorough consideration of the comments, we concluded that there was no equitable basis for granting rural electric or telephone cooperatives free access and use of the public lands. The use of public lands and national forest system lands for commercial purposes should be on the same terms and conditions as similar use of private lands.

Allowing free use of Federal lands to some users who serve commercial purposes while charging others, such as investor-owned utilities, which also serve rural areas for similar uses, would be patently unfair. The fees for use of the Federal lands are the appraised fair market rental value of the property and they are not excessive.

All taxpayers, whether they are customers or noncustomers, share in the cost of managing the Federal lands. The provisions for payment of annual use fees contained in the Federal Land Policy and Management Act simply provide that those persons or organizations receiving a special benefit from the Federal lands pay for that special benefit rather than requiring that persons who do not receive the special benefit pay for it. The same concept, incidentally, was just alluded to by a witness on the last bill.

For this reason, when the regulation covering rights-of-way were published, it was determined that cooperatives and municipal utilities, whose principal source of revenue is customer charges, will be required to pay the fees. We believe that policy is sound and we do not believe it should be negated by legislation.

With respect to cost reimbursement, at the direction of the Secretary of the Interior, the BLM is reviewing its cost reimbursement procedures with a view toward collecting the cost of processing and monitoring rights-of-way from those who benefit from using the public lands.

Without reimbursement for the cost of processing applications for rights-of-way and of monitoring them, the BLM may have some difficulty performing these functions under reduced budgets. The same may well be true of other land managing agencies.

This concludes my statement. I will be happy to respond to any questions.

[The prepared statement of Mr. Engdahl follows:]

AUG 4 1982

STATEMENT OF LYNN H. ENGDAHL, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 894, A BILL "TO EXEMPT RURAL ELECTRICAL COOPERATIVES FROM FEES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976".

I appreciate the opportunity to be here today to discuss S. 894.

S. 894 would amend the Federal Land Policy and Management Act to exempt rural electric and rural telephone cooperatives from payment of rights-of-way rental charges for use of public lands and National Forest System lands and from payment of reimbursable rights-of-way processing and monitoring costs. The exemption would apply to rights-of-way for all facilities, including distribution lines, transmission lines and power generation plants.

We oppose enactment of S. 894.

The question of the exemption that would be authorized by this bill has been given serious consideration on many occasions. In response to requests for public comments during the development of the rights-of-way regulations issued by the Secretary of the Interior and the special use permit regulations issued by the Secretary of Agriculture, many commentors requested that the regulations provide for free use for particular types of use and for certain types of organizations. Exemption from the requirements to pay for rights-of-way was specifically requested by rural telephone cooperatives and rural electric cooperatives.

After careful and thorough consideration of the comments we concluded that there is no equitable basis for granting rural electric or telephone cooperatives free access and use of the public lands. The use of public lands and National Forest System lands for commercial purposes should be on the same terms and conditions as similar use of private lands. Allowing free use of Federal lands to some users who serve commercial purposes while charging others, such as investor-owned utilities which also serve rural areas, for similar use would be patently unfair. The fees for use of the Federal lands are the appraised fair market rental value of the property and are not excessive. All taxpayers, whether they are customers or non-customers, share in the cost of managing the Federal lands. The provisions for payment of annual use fees contained in the Federal Land Policy and Management Act simply provide that those persons or organizations receiving a special benefit from the Federal lands pay for that special benefit rather than requiring that persons who do not receive the special benefit pay for it. For this reason, when the regulation covering rights -of-way were published, it was determined that cooperatives and municipal utilities, whose principal source of revenue is customer charges, will be required to pay the fees. We believe that policy is sound. We do not believe it should be negated by legislation.

With respect to cost reimbursement, at the direction of the Secretary of the Interior, the Bureau of Land Management is reviewing its cost reimbursement procedures with a view toward collecting the cost of processing and monitoring rights-of-way from those who benefit from using the public lands. Without reimbursement for the cost of processing applications for rights-of-way and of monitoring them, the Bureau of Land Management may have difficulty performing those functions under reduced budgets. The same may be true of other land managing agencies.

This concludes my statement. I will be happy to respond to any questions you may have.

Senator WALLOP. Thank you, Mr. Engdahl. I must say that in this instance, I will look personally at the administration's opposition to it. There is something vaguely different between the ILC's and the REA's, but would you comment if there is a possibility to the questions I posed in my opening remarks; one, in hearing if there is a possibility of a discounted fair market value solution that might be contrived and could be done administratively.

Mr. ENGDAHL. I don't presume to know the final answer to that question, but the Secretary has directed BLM to revisit the question in terms of equity and we are looking to questions such as those. The answers are not likely to be available at the time that you will be completing this record, but whatever we have at that point we will share with you.

The second issue you raised was essentially how did we arrive at the conclusions earlier. I have reference and could only turn in the short period of time I have to the October 9, 1979, Federal Register where those issues were debated to some extent. They are available for the record, if you would like them.

Senator WALLOP. If you would make them available, we would appreciate it. Those were October 1979?

Mr. ENGDAHL. In October 1979 and in July 1980, the questions of fee and fair market value were visited in relation to public comment, and the rationale used by the BLM is part of that.

Senator WALLOP. And they have not been revisited by this administration.

Mr. ENGDAHL. This administration is currently revisiting.

Senator WALLOP. Thank you. Senator Melcher, do you have any questions or comments?

Senator MELCHER. Yes; I do. What is your idea, Mr. Engdahl, of why we have rural electrics and rural telephones compared to, I guess, Ma Bell and the big power companies?

Mr. ENGDAHL. Senator Melcher, when REA brought electricity to my home in rural Montana somewhere in the vicinity of 1949, it meant we were able to get electricity even though there was no possible way that the user could in fact pay for it, because we were miles and miles from the next home.

Senator MELCHER. Did it cross any public land?

Mr. ENGDAHL. That particular one did not, sir.

Senator MELCHER. Then it is all right if you get yours, but if somebody else has to get some electric lights or a telephone and it crosses public lands, you want it to cost more.

Mr. ENGDAHL. I understand precisely the issue you are driving at.

Senator MELCHER. What cooperative are you served by on your ranch in Montana?

Mr. ENGDAHL. That ranch is in Golden Valley and I could not tell you exactly the name of the cooperative. It is outside of the Snowy Mountains in Golden Valley south of Lewistown. I cannot tell you the name of the cooperative.

Senator MELCHER. Is it south of Lewistown?

Mr. ENGDAHL. It is south of Lewistown and the southside of the Snowy's.

Senator MELCHER. That is pretty easy construction in there, isn't it?

Mr. ENGDAHL. Very easy construction. There are public lands in places where the construction would be much more difficult.

Senator MELCHER. When you have to cross the forest lands, do you want it to cost more to get to it?

Mr. ENGDAHL. No. As a matter of fact, the question of looking at that equity, if you will look at our regulations, there are options and it is at the discretion——

Senator WALLOP. I would just say this much. REA does not get a free ride across the private domain unless it is the private domain of those served by it and that is part of their contribution, but they do have to pay a public fair market value on private lands. Do they not?

Mr. ENGDAHL. That is true. The question that was asked, however, was——

Senator MELCHER. Is it true?

Mr. ENGDAHL. The question you asked me was——

Senator MELCHER. Is what Senator Wallop said true in your experience?

Mr. ENGDAHL. In our experience, each landowner donated his portion of the land as part of his cost.

Senator WALLOP. That is what I am saying. That is part of your cost if you are served by it.

Senator MELCHER. What about those landowners that have no dwelling on it, what do they get out of it when they give the free easement?

Mr. ENGDAHL. I really don't know.

Senator MELCHER. Well, I know. What they got out of it was nothing. And they gave the free easement. I don't know about what they do in Wyoming, but they gave the free easement in Montana because they wanted those lines built for the good of everyone.

My question is, do you want it to cost more? Because going up on a critic which no REA is going to serve or no private utility is going to serve and no Ma Bell or subsidiary of AT&T is going to serve, do we want it to cost more or not?

Mr. ENGDAHL. I can only answer by suggesting that there has been another subsidy in relation to REA as well.

Senator MELCHER. Why do we make it public policy to provide that subsidy? And we certainly have. I hope we can maintain it when we give the special subsidy to those real remote areas on some sort of basis of a customer per mile or a customer every 2 or 3 miles, so the line would be built.

I think what we are talking about is areas where lines will not be built if easement costs are added to it. We drafted this particular section of the bill, I guess we thought we knew where were at on it, to allow some discretion. But I am told that there is no discretion allowed, that what you have got is the policy of no rural electric or no rural telephone cooperative to be given easement without cost. Is that correct?

Mr. ENGDAHL. I will have to get the answer to that question, because I do not know.

Senator MELCHER. Somebody should be able to give us the answer now.

Mr. ENGDAHL. That is correct.

Senator MELCHER. They never found any instance where the Secretary determined that it was a nonprofit cooperative or association and therefore should not be charged.

Mr. KABAT. Since the promulgation of the regulation in 1980, we have been charging REA's, yes, sir.

Senator MELCHER. I regretted we were not more explicit in FLPMA. The intent was not arrived at off the top of our heads. The intent was arrived at after many years of pondering both by the group, the public group that was formed to advise us on what should be the management decisions on public lands, and then by Congress.

Now it seems to me that both the Bureau of Land Management and the Forest Service, in many instances, are served by rural electric and by rural telephone co-ops. Is that true?

Mr. ENGDAHL. That is absolutely true.

Senator MELCHER. So to the extent we increase the cost for those cooperatives, we are going to increase the cost to the two agencies. Is that supposed to be less than what it costs to process an easement?

Mr. ENGDAHL. The question you are asking is does the Federal agency pick up an additional cost. I think there is a difference between the two agencies, as near as I understand and whether or not they do in fact build rights-of-way of service only to Federal agencies.

Senator MELCHER. Well, just as long as we have agreed that if you increase the cost to those cooperatives that serve these two Federal agencies, whatever cooperative they might be, or whatever department, the Forest Service or BLM, you make a point and if there is no cost for those particular cooperatives and those would be the very ones seeking easements.

What about this, you want to improve, under that bill, the carrying capacity for both BLM and the Forest Service. You do not address that in your testimony, Mr. Engdahl, but would not this dampen any interest in putting the well where it ought to be and having the electric pump out where it ought to be on those public lands, would that not be counterproductive also, if that was decided or if that was arranged or proven that it was necessary on either the BLM lands or Forest Service lands?

Mr. ENGDAHL. The question of length of line going to a pump and the right-of-way question is surely a heavy part of the equity question we are exploring at this moment.

Senator MELCHER. I think you need a bill like this. I think that is why we wrote it to begin with and your testimony is very forthright and very definite on it. I am not convinced at all in the argument of trying to compare the REA's. I have never seen a rich REA or RPA. I have never seen any that serve any of these areas like we are discussing but what they needed every little cost saving that was available to them and certainly getting an easement across these lands is one way of saving cost for them.

And the proof of the pudding must be in the fact that of all of the thousands of landowners in Montana, whether or not it served them directly, they have always given the easement to a rural electric or a rural telephone. I just do not know any of them who have ever paid for an easement on private land. That must say something. And many of these lines go across tracts of land where the owner is not going to get a nickel out of the fact that the line is there.

He does it because he wishes to see the community and the area progress and we are still progressing in my State, as you well know, Mr. Engdahl. We have got a lot of progressing to do and we are not through yet. This is, I think, a very fine bill and I am certainly going to do what I can to get it out of this committee and get it considered by the Senate and hope the House will do likewise and hope the President will sign it.

Senator **WALLOP**. Thank you, Senator Melcher. And thank you, Mr. Engdahl. If you could provide those responses as early as possible, we would appreciate those.

[Subsequent to the hearing the Department of the Interior supplied the following:]

IN REPLY REFER TO:

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

1982 OCT 15 PM 3 26

Honorable Malcolm Wallop
Chairman, Subcommittee on Public
Lands and Reserved Water
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

During the August 4, 1982, hearing before your Subcommittee on S. 894, you inquired as to whether it would be possible for the Bureau of Land Management to grant rural electric or telephone cooperatives use of public lands either without charge or at a discounted fair market rental. You also requested that we provide you with our rationale for the regulations promulgated pursuant to section 504(g) of the Federal Land Policy and Management Act of 1976.

Our rationale for charging cooperatives for their use of the public lands is found in the enclosed extracts from the supplementary information published with the proposed regulations on rights-of-way in the Federal Register of October 9, 1979, and from the supplementary information published with the final regulations on rights-of-way in the Federal Register of July 1, 1980.

As indicated by Mr. Engdahl at the hearing, Secretary Watt has asked us to reexamine the question in terms of equity.

We have not yet completed our reexamination of the regulations and are not able, at this point, to project with any certainty what the outcome of our analysis will be.

We would like you to note, however, that while the regulations generally require utilities to pay fair market rental for their use of the public lands, the regulations do provide for limited exceptions. In particular, 43 CFR 2803.1-2(3) allows that no fee or a fee less than fair market rental may be authorized for a cooperative except those whose principal source of revenues is customer charges (43 CFR 2803.1-2(c)(1)), and where a right-of-way holder provides without charge, or at reduced rates, a valuable service to the public (43 CFR 2803.1-2(c)(3)).

If a cooperative can demonstrate that its principal source of revenues is other than customer charges, or if it can demonstrate that it provides its services without charge or at reduced rates to the public, the Bureau of Land Management would give serious consideration, on a case-by-case basis, to a proposal that such a cooperative be charged less than fair market rental.

If a change is made in our present position on the matter, we will advise you at the earliest possible date.

Sincerely,

Robt F Burford

Director

Enclosures

Comment: Many comments requested that the regulations establish unequivocal free use for particular kinds of use (telephones, industries) and types of organizations (REA cooperatives and governmental bodies). Others urged that all users pay the same rates.

Response: The Federal Land Policy and Management Act provides discretionary authority to waive rental fees where a right-of-way is granted in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost-share program.

It also provides discretionary authority to charge less than fair market value, including free use, to certain governmental and non-profit entities or where a valuable benefit is provided to the public or the programs of the agency without or at reduced charges. The House Report indicated the committee considered and supported long time agency policy of providing special price considerations favoring State and local governments and non-profit organizations. The Senate Report states "... it is not the intent of this committee to allow use of ... land without charge except where the holder is the Federal Government itself. ..."

Failure to charge fair market value provides a subsidy by all the public. It follows that free or lesser charges should be used only in those circumstances where all the public benefits from the use. Non-profit entities that are essentially tax or donation supported and which are engaged in a public or semi-public activity designed for the public health, safety or welfare will qualify for lesser charges. As a matter of equity, we believe it is inappropriate to charge lesser fees or grant free use when the holder is engaged in similar business and follows practices comparable to private commercial enterprise. For this reason, REA cooperatives and municipal utilities whose principle source of revenue is customer charges will, hereafter, be charged fair market value fees. In view of wide variations in organization, purpose and manner of doing business, it is impractical to attempt to interpret in the regulations each and every circumstance that may or may not qualify for fee reductions. Fair and equitable application will rest with the authorized officer. Uniformity will be achieved through Manual guidance and training. Decisions on charges are appealable.

Rental Fees

This section was the object of the second highest number of comments. One group of comments wanted certain additional groups of users exempted from the payment of a rental for the use of the public lands for a right-of-way. The rulemaking attempts, with certain enumerated exceptions, to treat all those who use the public lands for the same purpose in the same way. It would not be appropriate to charge one holder a rental based on fair market value for the right-of-way grant and not charge the same fair rental to another holder in like circumstances who is using the public lands for the identical purpose. One change has been made in this section to cover the statutory requirement to collect an annual rental for right-of-way grants and temporary use permits issued under the provisions of subpart 2880 of this title.

One comment objected to the requirement for the payment of the rental in advance on an annual basis, rather than a rental for the term of the grant. Payment of the rental in advance on an annual basis is required by section 504(g) of the Federal Land Policy and Management Act. The rulemaking follows the requirement of the statute and has not been revised.

One comment wanted instructions included in the rulemaking on how the appraisal for fair market value was to be made. For a long time the Bureau of Land Management has had manual guidance on appraisal methods, including use of independent appraisals. Those manual instructions are available to the public upon request. The rulemaking has not been amended to include this instruction.

A few comments questioned the provision allowing readjustment of rental fees, with one comment suggesting that readjustments be allowed only on renewal, assignment, transfer or review. The readjustment provision is a necessary part of this rulemaking if the Secretary of the Interior is to meet a requirement of section 504(g) of the Federal Land Policy and Management Act and recover the fair market value of the public lands covered by the right-of-way grant or temporary use permit. Readjustments will not be made unless a review of the land values in the area of the grant or permit indicate that there has been sufficient appreciation in land values to justify a readjustment. Normally, such reappraisals will not occur more often than every five years, but when events cause rapid escalation in land values in the area, the authorized officer will have no choce but to make an adjustment in the rental. The rulemaking does require reasonable notice before readjustment is made and the user has the right to appeal any readjustment. The only change in this is the addition of language making it clear that reappraisals will occur at least every five years.

Finally, one comment suggested that the Secretary of the Interior lacked authority to terminate a right-of-way grant or temporary use permit and hold any assets located on the public lands covered by the grant or temporary use permit for failure to make required payments. This provision is nothing more than a requirement that all assessed payments must either be paid or the holder has no right to use the lands covered by the payment and that the assets located on those lands are held subject to the right of the authorized officer to release them or use them to satisfy those obligations. This is a provision that is commonly required and exercised by landowners. There is no reason the United States cannot exercise this practice. No change has been made in this provision.

Senator **Wallop**. The next is a panel consisting of Mr. Thomas E. Harris, general manager, Consolidated Telephone Cooperative, Dickinson, N.Dak.; Mr. Frank T. Dottle, general manager, Dell Telephone Cooperative, Dell City, Tex.; Harold C. Ebaugh, manager, Triangle Telephone Cooperative Association, Inc., Havre, Mont.

Senator Melcher, would you care to introduce Mr. Ebaugh to the committee?

Senator **Melcher**. I have got to treat Mr. Ebaugh pretty good, because I have a request into him for a little help for one of his customers, so he knows that I am going to be pretty nice to him and welcome him more than usual with warmth and gratitude that you are here.

Senator **Wallop**. Mr. Ebaugh, since your Senator is at the table, why don't you begin?

Mr. **Ebaugh**. I think Tom is supposed to go first here. So I will yield to him.

Senator **Wallop**. No objection.

STATEMENT OF THOMAS E. HARRIS, MANAGER, CONSOLIDATED TELEPHONE COOPERATIVE, DICKINSON, N. DAK.

Mr. **Harris**. Thank you. Let me take this opportunity to thank the Public Lands and Reserved Water Subcommittee for hearing my comments on S. 894. I have filed a copy of my comments and with your permission, I will try to be as brief as I can in summarization.

Senator **Wallop**. By all means, all your comments will be included in the record.

Mr. **Harris**. My name is Thomas E. Harris. I am the manager of Consolidated Telephone Cooperative in Dickinson, N. Dak. Today I am also speaking on behalf of the National Telephone Cooperative Association or NTCA as chairman of the industry relations committee.

NTCA is a national nonprofit association representing more than 360 cooperatives and other small telephone systems providing service in rural areas in over 40 States and territories.

Consolidated Telephone Cooperative was organized in the 1950's, because existing telephone companies regarded the area as unprofitable. We now operate 13 small rural exchanges located in western North Dakota. From these exchanges we serve 3,800 member-owners at an average investment of over $3,200 per main station. This also relates to the 1.2 customers per mile of line density in the area we are obligated to serve under the area coverage provision of the REA mortgages. As a matter of practice, we have not paid for easements to cross public or private lands.

Our members regard free easements as being in the best interest of the community as a whole. Since the organization of Consolidated Telephone Cooperative, we have crossed U.S. Forest Service property. Until this year, we have never been charged an easement fee for telephone lines.

In 1976, Congress passed the Federal Land Policy and Management Act. The act provided for commercial companies to pay easement rental fees to agencies controlling Federal lands. The agencies were given the discretion to charge reduced or no fees at all to cooperative and nonprofit entities.

In promulgating regulations to implement the act, the Bureau of Land Management and the Forest Service decided not to exercise the option to charge reduced fees or to grant free easements to cooperatives. The Forest Service stated its reasons for charging fair market rate to cooperatives in the regulations published on June 5, 1980, saying:

"Nonprofitability should not preclude the charging of a rental fee because a nonprofit organization could be in direct competition for services provided by a profit-making enterprise." That is in paragraph 251.57, part VI.

Mr. Chairman, it is unlikely that another telephone system would be competing with Consolidated Telephone Cooperative to provide services. Few utilities would compete to provide telephone service in an area where the density is only 1.2 customers per mile of line.

We are concerned about the impact of the regulations for several reasons. First, we feel that the precedent set by the Federal Government charging for easements could be very harmful to cooperatives in general. If all landowners charge as the Forest Service has billed, each of our member-owners would have to be assessed additional charges to cover the charges of these rights-of-way.

Much of the privately held land is cultivated and Forest Service land is not. The charges for crossing private land would then be substantially higher, closer to $20 per acre or more.

The Forest Service is accruing revenues from cattle grazing on the land for which we are paying easement fees. It hardly seems fair for our cooperative members to pay higher telephone bills because the Federal Government wishes to collect twice for the use of the same piece of land.

Finally, we feel that these charges, coupled with other changes going on in the telecommunications industry, can be very alarming. It would appear that everyone is racing for a piece of the consumer's dollars.

The rewrite of the Communications Act can and probably will have dramatic effects on the customers' local service rate. The deregulation of customer premise equipment can and will affect local service rates and was intended to be to their benefit.

The Consent Decree between the Justice Department and AT&T can and probably will have its effect on the customer's rates for local service.

Proposed reductions in the local programs of the Rural Electrification Administration can and probably will have a detrimental effect on local rates in rural areas.

Another very important issue will be a major overhaul of the traditional division or separation procedures for toll revenues and a term "access charges." The FCC and the National Association of Regulatory Utility Commissioners are struggling with these.

I am very pleased to learn that Senator Andrews and Senator Burdick of North Dakota are supporting S. 894. They know the need for adequate communications facilities for rural America.

I would recommend consideration be given to alteration of some of the minimum requirements or their interpretation as followed today. Charges for duplicative engineering studies that are required in the regulations, for example, are also troubling. In the attachments to my comments, I have documented some of the charges that have been levied against Consolidated Telephone Cooperative.

I hope that the subcommittee will consider addressing these issues as well as the rental fees.

I will do my very best to answer any questions you may have and I urge you to recommend passage of S. 894. Thank you.

[The prepared statement of Mr. Harris follows:]

Consolidated Telephone Cooperative
"owned by those we serve"
BOX 1077 · DICKINSON, NORTH DAKOTA 58601 · AREA CODE 701 225-6061

Before the Subcommittee
On Public Land and Reserved Water

In the Matter of)
Conversion to Annual Charges) Senate Bill S. 894
after issue of Feeless Permit) Hearing August 4, 1982

COMMENTS OF THOMAS E. HARRIS REPRESENTING CONSOLIDATED TELEPHONE COOPERATIVE

Let me take this opportunity to thank the Public Lands and Reserved Water Subcommittee for hearing my comments on S. 894.

My name is Thomas E. Harris. I am the Manager of Consolidated Telephone Cooperative, Dickinson, North Dakota. Today I am also speaking on behalf of the National Telephone Cooperative Association (or NTCA) as Chairman of the Industry Relations Committee. NTCA is a national non-profit association representing more than 360 cooperatives and other small telephone systems providing service in rural areas in over 40 states and territories.

Consolidated Telephone Cooperative was organized in the 1950's, because existing telephone companies regarded the area as unprofitable. We now operate thirteen small rural exchanges located in Western North Dakota. From these exchanges, we serve 3,800 member-owners at an average investment of over $3,200 per main station. This also relates to the 1.2 customers per mile of line density in the area we are

RTC

obligated to serve under the "Area Coverage" provision of the REA mortgages.

As a matter of practice, we have not paid for easements to cross public or private lands. Our members regard free easements as being in the best interest of the community as a whole. Since the organization of Consolidated Telephone Cooperative, we have crossed U.S. Forest Service property. Until this year, we have never been charged an easement fee for telephone lines.

In 1976, Congress passed the Federal Land Policy and Management Act. The Act provided for commercial companies to pay easement rental fees to agencies controlling Federal lands. The agencies were given the discretion to charge reduced or no fees at all to cooperative and non-profit entities. In promulgating regulations to implement the Act, the Bureau of Land Management and the Forest Service decided not to exercise the option to charge reduced fees or to grant free easements to cooperatives. The Forest Service stated its reasons for charging fair market rate to cooperatives in regulations published on June 5, 1980, saying,

> "...non-profitability should not preclude the charging of a rental fee because a non-profit organization could be in direct competition for services provided by a profit-making enterprise." (Para. 251.57 Rental/Fees, Part VI, Department of Agriculture, U.S. Forest Service, Federal Register)

Mr. Chairman, it is unlikely that another telephone system would be competing with Consolidated Telephone Cooperative to provide services. Few utilities would compete to provide telephone service in an area where the density is only 1.2 customers per mile of line.

We are concerned about the impact of the regulations for several reasons. First, we feel that the precedent set by the Federal Government charging for easements could be very harmful to cooperatives in general. If all landowners charge as the Forest Service has billed, each of our member-owners would have to be assessed added charges to cover the charges of these rights-of-way. Furthermore, as privately held land is cultivated and Forest Service land is not, the charges for crossing private land would be substantially higher -- closer to $20 per acre or more.

The Forest Service is also accruing revenues from cattle grazing on the land for which we are paying easement fees. It hardly seems fair for our cooperative members to pay higher telephone bills because the Federal government wishes to collect twice for the use of the same piece of land.

Finally, we feel that these charges, coupled with other changes going on in the telecommunications industry, can be very alarming. It would appear that everyone is racing for a piece of the consumer's dollars.

The re-write of the Communications Act can and probably will have dramatic effects on the customers' local service rate.

The deregulation of customer premise equipment can and will affect local service rates and was intended to be to their benefit.

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I am very pleased to learn that Senator Andrews and Senator Burdick of North Dakota are supporting S. 894. They know the need for adequate communications facilities for rural America.

I would recommend consideration be given to alteration of some of the "minimum requirements" or their interpretation as followed today. Charges for duplicative engineering studies that are required in the regulations, for example, are also troubling. In the attachments to my comments, I have documented some of the charges that have been levied against Consolidated Telephone Cooperative. I hope that the Subcommittee will consider addressing these issues as well as the rental fees.

I will do my very best to answer any questions you may have and I urge you to recommend passage of S. 894.

Thank you.

Thomas E. Harris

Thomas E. Harris, General Manager
CONSOLIDATED TELEPHONE COOPERATIVE

Consolidated Telephone Cooperative
"owned by those we serve"
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Before the Sub Committee

On Public Land and Reserved Water

In the Matter of)
)
Conversion to Annual Charges) Senate Bill S-894
)
after issue of Feeless Permit) Hearing August 4,1982

COMMENTS OF THOMAS E. HARRIS REPRESENTING CONSOLIDATED TELEPHONE COOPERATIVE

My name is Thomas E. Harris, General Manager of Consolidated Telephone Cooperative, Post Office Box 1077, Dickinson, North Dakota 58601.

We operate thirteen (13) small rural exchanges located in Western North Dakota. From these exchanges, we serve 3,800 member-owners at an average investment of over $3,200 per main station. This also relates to the 1.2 customers per mile of line density in the area we are obligated to serve under the "Area Coverage" provisions of the R.E.A. mortgages.

Three (3) of our thirteen (13) exchanges extend service into the northern edge of South Dakota by about twenty (20) miles which does not enhance the density or investment per member-owner.

As stated in our letter to Mr. James F. Mann, Forest Supervisor (copy attached):

> "We are somewhat puzzled as to why these have suddenly become annual billing permits when the facilities were installed under a regulation that provided for non-profit (cooperative) telephone organizations to cross government lands to serve their member-owners".

Also as stated in our letter to the North Dakota Legislative Delegation in Washington, D. C. (copy attached):

> "We are sure the $775.00 per year will not make or break this Cooperative's efforts to serve our members. However, if all landowners that have issued permits or easements to cross their land could take the same action as the Forest Service, it would, in fact, price communication Services out of reach for our rural people".

A very rapid calculation shows that if all landowners were permitted to charge as the Forest Service has billed, each of our member owners would be assessed added charges just for right-of-way. The fees quoted by the Forest Service would probably not apply as most of the land that these lines are buried in are cultivated and, therefore, we might assume it would be closer to $20 per acre or more.

Again, we call your attention to the two (2) letters attached and referred to before. They state our concerns for our member owners, the raw materials producer we depend on to feed and clothe us.

We call attention to paragraph 251.57 Rental fees, Part VI, Department of Agriculture, Forest Service in the Federal Register dated Friday, June 5, 1980:

> "The commenter also suggested that non-profitability should not preclude the charging of a rental fee because a non-profit organization could be in direct competition for services provided by a profit-making enterprise."

To that assumption we ask the following question:

Where are there any commercial or profit-making utility enterprises that are "competing" for service areas with a density of 1.2 customers per mile of line either on Forest Service land or near it?

As you consider S-894, please be reminded of what they are doing to an already underpaid, overcharged industry when they assess added costs to farmers and ranchers to retain a simple communication facility. These are no longer luxuries, they are necessities for the protection of health, life and property.

Thomas E. Harris

Thomas E. Harris, General Manager

Consolidated Telephone Cooperative
"owned by those we serve"
BOX 1077 · DICKINSON, NORTH DAKOTA 58601 · AREA CODE 701 225-6061

March 12, 1982

Mr. James F. Mann
Forest Supervisor
2602 First Avenue N
P. O. Box 2556
Billings, Montana 59103

Re: Conversion to Charge
Permit

Dear Sirs:

We have received your two (2) billings (No. 793 in the amount of $390.00 for No. 4043 and No. 805 in the amount of $385.00 for No. 4035).

We are somewhat puzzled as to why these have suddenly become "annual billing permits" when the facilities were installed under a regulation that provided for non-profit (cooperatives) telephone organizations to cross government lands to serve their member-owners.

Consolidated Telephone Cooperative is and always has been "non-profit" and we have always complied with any and all regulations your department has requested. We have also converted all of our communication facilities to underground. This improved the esthetics of the entire area.

We have had very little, if any reason to dig up the communication cables other than when pipeline crews have cut them or when your department has requested them moved for road improvements.

We believe this is an imposition of yet another effort to deny or at least tax adequate living facilities for rural people who do such a great job of producing food and fiber for this great nation and the rest of the world.

These billings will be presented to and discussed by our Board of Directors at the next meeting (March 19, 1982). We will notify your office of the Board's decision regarding a request for "Administrative Review" after this meeting.

Mr. James Mann
Page Two
March 12, 1982

We are forwarding copies of this information to the North Dakota Legislative Delegation in Washington, D. C.

Also enclosed find a copy of our letter to them.

Yours truly,

CONSOLIDATED TELEPHONE COOPERATIVE

Thomas E. Harris

Thomas E. Harris
Manager

dw

Enclosure

cc: Senator Mark Andrews, N.D.
Senator Quentin Burdick, N.D.
Congressman Byron Dorgan, N.D.
NTCA - Washington, D. C.
NDATC - Mandan, N.D.

Consolidated Telephone Cooperative
"owned by those we serve"
BOX 1077 · DICKINSON, NORTH DAKOTA 58601 · AREA CODE 701 225-6061

March 12, 1982

Senator Quentin Burdick, N.D.
451 Russel Office Building 20510

Senator Mark Andrews, N.D.
417 Russel Office Building 20510

Congressman Byron Dorgan
427 Cannon House Office Building 20515

Washington, D. C.

Re: Annual Charges for Telephone
Facilities on Forest Service
Lands

Dear Sirs:

Enclosed is a copy of a letter answering the Forest Service's billing for permits for telephone facilities crossing lands under their jurisdiction.

We are sure the $775.00 per year will not make or break this Cooperative's efforts to serve our members. However, if all land owners that have issued permits or easements to cross their lands could take the same action as the Forest Service, it would, in fact, price Communication Services out of reach for our rural people.

We have enclosed copies of their correspondence to us regarding this change, copies of the billings in question and copies of their "Fee Determination Statements". To us, the "Fee" as quoted is arbitrary. We have no method of determining or attaching any fairness to the fee.

This type of action coupled with the communication rewrite, the decree agreement between A.T.&T. and the Department of Justice, F. C.C.'s actions toward making the cost causer responsible for the costs and the Administration's movement toward ham stringing or killing the R.E.A. Telephone Loan Program will surely place a needed tool in jeopardy for rural America.

Let us take this opportunity to thank you for any advice or assistance you can provide us on this matter.

It is gratifying to know you are still there and watching out for rural interests.

Yours truly,

CONSOLIDATED TELEPHONE COOPERATIVE

Thomas E. Harris

Thomas E. Harris
Manager

Consolidated Telephone Cooperative
"owned by those we serve"
BOX 1077 · DICKINSON, NORTH DAKOTA 58601 · AREA CODE 701 225-6061

Before the Subcommittee

On Public Land and Reserved Water

In the Matter of	)	
Conversion to Annual Charges	)	Senate Bill S. 894
after Issue of Feeless Permit	)	Hearing August 4, 1982

COMMENTS OF THOMAS E. HARRIS REPRESENTING CONSOLIDATED TELEPHONE COOPERATIVE

We have one (1) more item that was called to our attention during the discussions of "Forest Service Crossing Permits".

SPECIAL USE PLAT REQUIREMENTS

(Copy Attached)

These are rather innocent appearing requirements. However, when it comes time to comply with the "Minimum Requirements", we find that they become very expensive.

We are presently in the process of providing service to a new location crossing federal lands and our engineer has estimated that these "minimum requirements" will cost us one thousand dollars ($1,000) plus expenses which will be close to two hundred fifty dollars ($250.00).

We feel this is unnecessary since we are staying inside of a utility corridor staked by the Forest Service. In fact, we are staying close to two feet (2 feet) from the west line as staked.

Our normal plats and staking sheets are very accurate and precise. However, they are not prepared by "licensed engineers or surveyors". In other words, complying with these "minimum requirements" is a duplication of efforts and more than doubles the original staking or engineering cost.

Another point to be made here is that North Dakota has a law that requires us to locate our facility if anyone needs to dig close to it and requests location.

However, we find that this is not complied with and we get cut anyway. Therefore, the plat offers us no protection after having paid the price.

Thomas E. Harris

Thomas E. Harris, General Manager
CONSOLIDATED TELEPHONE COOPERATIVE

SPECIAL USE PLAT REQUIREMENTS

Minimum requirements for pipeline, powerline, telephone and underground cable plats on Forest Service land:

Maximum size of plat: 2' x 3' (Federal aid sheet size)

Title block with following:

- Name of company applying
- Size and type of line (gas, crude, etc.)
- Material (steel, plastic with tracer wire, etc.)
- Origin and destination
- Depth of line
- Right-of-way width
- Name of company preparing plat:
  - Date
  - Scale (1" = 1000' minimum)
  - Drawn by (name)
- Signed, sealed and dated by licensed engineer or surveyor in the State of North Dakota.

Plat shall show:

- Sections, township, range, north arrow, and 5th P.M.
- Centerline of pipeline with stations at P.I.s
- Property boundaries and land ownership, including adjoiners
- Crossing of existing utilities (identify both overhead and underground)
- Roads, highways and other existing improvements
- Bearing of tangents
- Length of line on Forest Service by subdivision
- Land ties at subdivision boundaries identifying what is being tied to (set stones, brass cap, etc) Subdivision boundaries are defined as section lines.
- Land ties also required at point of entry and exit of Forest Service lands.

EXHIBIT B

Senator WALLOP. Thank you, Mr. Harris.
Mr. Dottle.

STATEMENT OF FRANK T. DOTTLE, GENERAL MANAGER, DELL TELEPHONE COOPERATIVE, DELL CITY, TEX.

Mr. DOTTLE. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Frank Dottle and I am the general manager of the Dell Telephone Cooperative in Dell City, Tex. I am also speaking on behalf of the members of NTCA.

I appreciate having an opportunity to appear before you today to express my support for S. 894. The difficulties of telephone and electric cooperatives in providing service at affordable rates in rural areas have been compounded by the recent policies of the Federal Bureau of Land Management and the Forest Service.

In implementing the 1976 Federal Land Policy and Management Act, these agencies require substantial filing, processing, and rental fees for easements across Federal lands. S. 894 addresses one of the most crucial problems caused by these policies, rental fees charged for easements across Federal lands.

Mr. Chairman, I would also like to request that a copy of Dell Telephone Cooperative's testimony before the joint board be included in today's hearing record. I recognize it is rather lengthy, but I think it will provide some insight into other problems with which rural cooperatives are struggling.

Dell Telephone Co-op was begun in June 1956 when it became clear that the commercial telephone companies would not provide telephone service to our service area. The co-op was started with approximately 50 equity contributors and an REA loan of $172,000. In November 1958, we installed the first telephone.

Dell Co-op now serves 435 subscribers located in a total of 7,062 square miles of Texas and New Mexico. Nearly 3,311 square miles are in New Mexico, where we average 0.17 customer per mile of telephone line. The system's average customer density is 0.58. The average annual income for a family in our area is less than $12,250. A large percentage of the population is low income.

Over 41 percent of our subscribers are still on four-party service, including all of the New Mexico customers. Our average plant investment per subscriber is $6,703. Our basic monthly rate for four-party residential service is $16, more than what you pay here in Washington for single-party service.

Dell Telephone Co-op acquired the New Mexico territory in 1981. At that time, there were 100 families in the new area who had never had telephones. We obtained an REA loan of approximately $3 million to capitalize the new construction. The amount of redtape involved for construction of one line included obtaining seven easement agreements. Dell Telephone did not have to pay any filing fees or other fees for six of these permits.

The new territory includes approximately 28 miles of land owned by the Federal Government under the auspices of the Bureau of Land Management. BLM notified Dell Telephone that we must pay a fair market rate for an easement across the BLM land and that Dell Telephone must first obtain engineering and archaeological studies of the property.

The archaeological studies were required despite the fact that all of the cable runs in the rights-of-way of existing State or county roads. The archaeological study of the properties cost $3,116.43. In addition, Dell Telephone was required to pay advance administrative charges amounting to $1,500 and post permit administrative charges of $600.

The 5-year rental fee will be $5,810, which includes a discount for payments made 4 years in advance. The total cost in 5 years to cross the BLM land will be $10,426. These charges are documented on the attachments to this statement. The permits were needed to provide service to eight subscribers.

The total local revenue from these subscribers over the 5-year term of the permits will be $8,640. Without calculating the other costs of providing telephone service to these customers, costs such as line repair, installation and rental of the telephone units, the actual cost of operating the system, the co-op will lose $1,786 on these customers over the 5-year period

There are 25 more families in Eddy and Otero Counties in New Mexico who do not have telephones. Ordinarily, Dell Telephone would have considered acquisition of this property in order to serve these families. However, providing telephone service to these people would require crossing additional Federal lands. Given the present policies of the BLM and the Forest Service, it would not be feasible for Dell Cooperative to attempt to serve those families.

Although the cooperative is required under the terms of its REA loans to provide service to the largest number subscribers that is practical, the added cost of the BLM easements seriously impairs the ability of the co-op to extend service to these families. We feel that this clearly illustrates how the easement policies are undermining the goals of the Federal Government under the Rural Electrification Act.

We strongly support S. 894. We would also support any additional provisions to exempt cooperatives from the filing, monitoring, and engineering fees that the regulations require. These requirements as proposed are burdensome to many small telephone systems.

We believe that the continued imposition of these requirements will jeopardize universal telephone service for rural Americans, as co-ops such as ours find it prohibitively expensive to extend service to rural areas near Federal lands.

Those cooperatives which choose to pay the high easement fees will be forced to raise local rates to cover the higher costs of service. Such an increase in local rates necessitated by the BLM policy will price many rural Americans out of telephone service. Our subscribers already are paying 60 percent above the national average basic monthly rate.

Changes in the communications industry can be expected to increase this level even further. Adding charges based on the BLM easement fees will drive many of our subscribers living on low farm incomes or fixed incomes to drop telephone service altogether.

We urge the subcommittee to approve S. 894. The bill will afford considerable relief for cooperatives, such as Dell Telephone, serving areas bordering Federal lands. We appreciate having had an opportunity to testify today to present our concerns over the BLM and Forest Service regulations. Thank you.

[The prepared statement of Mr. Dottle follows:]

STATEMENT OF FRANK T. DOTTLE, GENERAL MANAGER
DELL TELEPHONE COOPERATIVE
DELL CITY, TEXAS
on behalf of
THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
before the
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
of the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Frank T. Dottle, and I am the General Manager of the Dell Telephone Cooperative in Dell City, Texas. I am also speaking on behalf of the members of the National Telephone Cooperative Association (NTCA). NTCA is a national non-profit organization representing over 360 cooperatives and small telephone systems which provide service in rural areas of over 40 states. The capital for the development of these systems was borrowed under the loan programs of the Rural Electrification Administration (REA).

I appreciate having an opportunity to appear before you today to express my support for S. 894. The difficulties of telephone and electric cooperatives in providing service at affordable rates in rural areas have been compounded by the recent policies of the Federal Bureau of Land Management and the Forest Service. In implementing the 1976 Federal Land Policy and Management Act, these agencies require substantial filing, processing and rental fees for easements across federal lands. S. 894 addresses one of the most crucial problem caused by these policies, rental fees charged for easements across Federal lands.

Mr. Chairman, I would also like to request that a copy of Dell Telephone Cooperative's testimony before the Joint Board be included in today's hearing record. I recognize that this is rather lengthy, but I think it will provide some insight into the other problems with which rural telephone cooperatives are struggling.

Dell Telephone Cooperative was begun in June 1956, when it became clear that the commercial telephone companies would not provide telephone service to our areas. The coop was started with approximately 50 equity contributors and an REA loan of $172,000. In November, 1958, we installed the first telephone.

Dell Coop now serves 435 subscribers located in a total of 7,062 square miles of Texas and New Mexico. Nearly 3,311 square miles are in New Mexico, where we average 0.17 customers per mile of telephone line. The system's average customer density is 0.58. The average annual income for a family in our area is less than $12,250. A large percentage of the population is low-income.

Over 41% of our subscribers are still on four-party service, including all of the New Mexico customers. Our average plant investment per subscriber is $6,703. Our basic monthly rate for 4-party residential service is $16 -- more than what you pay here in Washington for single-party service.

Dell Coop acquired the New Mexico territory in 1981. At that time, there were 100 families in the new area who had never had telephones. We obtained an REA loan of approximately $3 million to capitalize the new construction. The amount of red tape involved for construction of only one line included obtaining 7 easement agreements. Dell Telephone did not have to pay any filing or other fee for six of these permits.

The new territory includes approximately 28 miles of land owned by the Federal government under the auspices of the Bureau of Land Management (BLM). BLM notified Dell Telephone that the cooperative must pay fair market rates for an easement across the BLM land, and that Dell must first obtain engineering and archaeological studies of the property. The archaeological studies were required despite the fact that all of the cable runs in the rights-of-way for existing state or county roads. The archaeological study of the properties cost $3,116.43. In addition, Dell Telephone was required to pay advance administrative charges amounting to fifteen hundred dollars and post-permit administrative charges of six hundred dollars. The 5-year rental fee will be $5,810, which includes a discount for payments made four years in advance. The total cost in five years to cross the BLM land will be $10,426.00. These charges are documented on the attachments to this statement. The permits were needed to provide service to 8 subscribers. The total local revenue from these subscribers over the five year term of the permits will be $8,640.00. Without calculating the other costs of providing telephone service to these customers -- costs such as line repair, installation and rental of the phone units, the actual cost of operating the system -- the coop will lose $1,786.00 on these customers over the five- year period.

There are 25 more families in Eddy and Otero Counties in New Mexico who do not have telephones. Ordinarily, Dell Telephone would have considered acquisition of this territory in order to serve these families. However, providing telephone service to these people would require crossing additional Federal lands. Given the present policies of the BLM and the FS, it would not be feasible for Dell Cooperative to attempt to serve those families.

Although the cooperative is required under the terms of its REA loans to provide service to the largest number of subscribers that is practical, the added cost of the BLM easements seriously impairs the ability of the cooperative to extend service to these families. We feel that this clearly illustrates how the easement policies are undermining the goals of the Federal government under the Rural Electrification Act.

We strongly support S. 894. We would also support additional provisions to exempt cooperatives from the filing, monitoring and engineering fees that the regulations require. These requirements as proposed are burdensome to many small telephone systems. We believe that the continued imposition of these requirements will jeopardize universal telephone service for rural Americans, as coops such as ours find it prohibitively expensive to extend service to rural areas near Federal lands.

Those cooperatives which choose to pay the easement fees will be forced to raise local rates to cover the higher costs of service. Such an increase in local rates necessitated by the BLM policy will price many rural Americans out of telephone service. Our subscribers are already paying 60% above the national average basic monthly rate. Changes in the Communications industry can be expected to increase this level further. Adding charges based on the BLM easement fees will drive many of our subscribers living on low farm incomes or fixed incomes to drop telephone service altogether.

We urge the Subcommittee to approve S. 894. The bill will afford considerable relief for cooperatives, such as Dell Telephone, serving areas bordering Federal lands. We appreciate having had an opportunity to testify today to present our concerns over the BLM and FS regulations.

Thank you.

STATEMENT OF DELL TELEPHONE COOPERATIVE, INC.

Dell City, Texas

Before the
JOINT BOARD STAFF
Dallas, Texas

In the Matter of	X	
	X	
Amendment of Part 67 of the	X	
Commission's Rules and	X	CC Docket 80-286
Establishment of a Joint Board	X	
	X	
To: Federal/State Joint Board	X	

The Dell Telephone Cooperative, Inc., Dell City, Texas, respectfully submits the following information and comments for consideration by the Federal-State Joint Board in the matter of Jurisdictional Separations Procedures.

Dell Telephone is a public utility organized and incorporated under Article 1528C, of the Statutes of the State of Texas as a telephone cooperative as a result of telephone service being eliminated from the operations of an electric cooperative serving the territory.

The Cooperative was granted a charter in June, 1956, for the purpose of providing local, long distance private line and special telecommunication service in one town and two far West Texas counties of Culberson and Hudspeth. The Cooperative also serves members in Eddy and Otero Counties in Southeastern New Mexico.

To finance the telephone cooperative, an application was made in 1956 for funds from the REA to finance the provision of providing telephone service in areas where no private enterprise would make the investment required to serve such a sparsely settled section of West Texas. Loan funds in the amount of $172,000 were granted initially under the REA loan program to permit service improvement and expansion. The first telephones for the new cooperative were placed in service in November, 1958.

In Culberson and Hudspeth Counties, Dell Telephone's service area consists of 3,751 square miles of the highest mountains in Texas, desert area, salt flats, canyons, grass lands and some areas suitable for agriculture when irrigated, ranching and hunting. In this area, the Cooperative has 380 customers or an average of one for each ten square miles of service area.

In Southeastern New Mexico, the Cooperative's service area is 3,311 square miles of terrain similar to the Texas area. Prior to October 1981, when a new exchange was cut into service, at Timberon, New Mexico, a total of only 49 customers were served in New Mexico from its Dell City exchange making a customer density of one for each sixty-four (64) square miles of service area which, prior to the completion the new exchange was 3,126 square miles. The new exchange served an additional 102 customers and added 185 square miles to the area served. In New Mexico there is now an average of one customer per 22 square miles. Another exchange is now under construction in the New Mexico area to serve 19 applicants.

At the end of 1980, service was provided from four (4) small dial offices with an average of 108 customers per exchange. For the entire system there is a density of only one customer for each fourteen (14) square miles of service area and approximately .17 customers per route mile of line.

These statistics cover the area certificated to Dell Telephone as a service area under which there is an assumed obligation to provide service commensurate with demand and ability to fund costs of construction to meet such demand under present REA guidelines.

Other operating conditions merit serious consideration when viewing the importance of any revenue reduction.

At the end of 1980, 178 or 41.2% of the Cooperative's main stations were still on party lines of 4 or 5 parties. Through use of wire line rural carriers as many as thirty-two (32) customers are served on one open wire physical circuit over 30 miles long. If this high maintenance cost circuit fails, thirty-two customers are without service. These customers are located in a remote area and are employed by a natural gas production and supply company at a compressor station. Other rural lines are over 70 miles long.

Maintenance costs due to the nature of the terrain, and high winds in the mountain areas cause extremely high maintenance. In 1980, expense for maintenance alone averaged $24.37 per average main station per month which exceeded the entire income from local exchange service which averaged $21.12 per average main station or 15.4%.

Low density in the area where there is an average of only 17 customers per route mile of line requires an extraordinarily high investment in facilities to provide service in areas such as described herein. At the end of 1980, Dell Telephone had $3,886 invested per main station in service. Much of that plant, particularly central office equipment, has been in service many years and is obsolete considering current technology.

At the end of 1981, the investment in telephone plant in service had increased to an averge of $6,703 per main station. Exhibit "A" attached illustrates plant investment and main station growth from 1977 to 1981 inclusive.

The foregoing presents a basis for further discussions regarding the affects of long distance revenues on the Cooperative's ability to meet the purpose of its incorporation as a Cooperative through the provision of telecommunications services to its members made available through financing by the Rural Electrification Administration.

Following Dell Telephone's implementation of service as a cooperative, the operation yielded a profit for only two years. From 1961 through 1978, operating expenses either exceeded total revenues or did not provide sufficient net operating margin to meet fixed charges and make loan repayments are set forth in their loan agreement. It was necessary to borrow additional funds simply to meet these requirements or request deferral of repayment obligations.

Based on a new toll settlement agreement allowing the Cooperative to recover its costs associated with the toll or long distance segment of its operation, the year 1979 yielded a positive earnings picture and provide revenues enabling the resumption of interest and principal repayments on the REA notes from net operating income or margins.

Because of high operating costs associated with Dell's operation, revenue from toll settlements was approximately 123% higher than the toll billed customers. Recovery of such high costs presents a clear example of the disparities between settlements and toll rates which are established on averages. At the same time, the serving company has a source of expense recovery without seeking higher rates for exchange service. The attached Exhibit "B" graphically illustrates comparisons between long distance charges billed the cooperative's customers and settlements revenue received from average schedules and/or cost separations for a 5-year period, 1977 through 1981.

Based on recovery of costs using current separations procedures, the revenues enable the Cooperative to improve and expand its facilities and furnish modern dependable telecommunications service to the low density high investment costs area.

Any settlement procedure or formula which reduces the revenues from the long distance or toll segment of Dell Telephone's business would cause two extremely critical results:

1. Impair the ability to improve and expand service to meet the daily needs of its member customers and applicants.
2. Cause an exorbitant increase in local exchange access rates to recover lost revenues to meet current operating costs and interest on its REA loans.

Should the proposal to remove CPE from the toll allocation formula and the reduction of SPF to SLU for non-traffic sensitive plant be enacted, Dell Telephone's toll revenues would be reduced an average of $23.14 per main station per month.

Their present weighted average local rate is $17.64, which is more than twice the average weighted local rate reflected on attachment "A" to the comments presented by the Texas Statewide Telephone Cooperative, Inc. to the joint board staff under this Docket 80-286 on February 2, 1982 for other Texas Telephone Cooperatives.

This already high rate would increase to $40.78 per month for the same service if the cooperative continued the present level of earnings which in only the last two years allowed it to pursue its efforts to provide adequate and dependable service to its members.

The average annual employment income for the area is less than $12,250. Over 61% of the population is of Spanish origin.

The eventual increase required in local exchange rate would cause customers on low, fixed or otherwise limited incomes to terminate their service because of inability to pay rates any appreciable mamount higher than their present rates.

Due to the great distances which must be traveled in this area, customers would be deprived of any effective means of communication or any prospect of service improvement such as party-line elimination based on up-grades to oneparty line service.

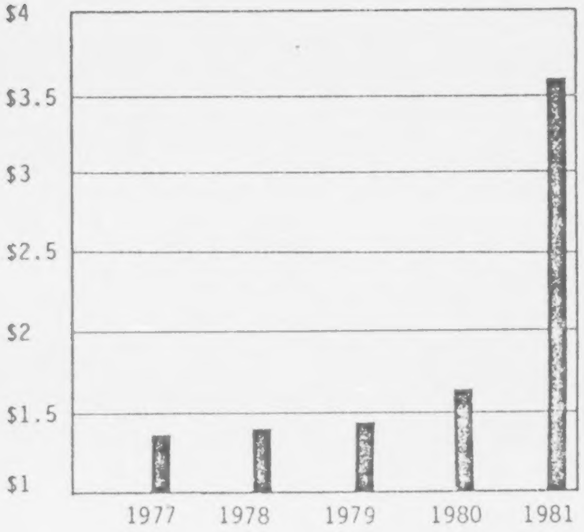
Should the cooperative lose a substantial number of members from their inability to pay for their service an additional burden would be placed on the remaining members to pay even higher rates to yield operating revenues or revert back to the deficit situation which existed for almost twenty years prior to recovering toll-related costs under present separations and settlements procedures.

The rural areas of Texas and the nation have fared well under the concept of universal service at heretofore reasonable rates based on the availability of funds at reasonable rates and the averaging of rates from the pooling of revenues and allocation of expenses.

Many changes have been made so far in this decade alone and more are undoubtedly in store from the regulatory and judicial processes which will impair the ability of the operating companies to continue to maintain reasonable service standards, meet competition, and at the same time obtain capital to improve or expand plant to conform to current technology in the telecommunications business.

We would respectfully request that the Joint Board explore all reasonable methods and procedures which will give proper and fair consideration to adequate recovery of toll-related costs, both state and interstate which would not fall below, at the least, present revenues to permit small cooperatives such as Dell Telephone, other cooperatives, small privately owned companies to continue their efforts to supply adequate modern and dependable telecommunication service to its predominantly rural customers.

To do otherwise may see an era of loan defaults, bankruptcies and perhaps not a too far-fetched thought of a form of "Federalized" telephone service due to foreclosures of REA-held mortgages because of revenue deficiencies as loss of customers.



GROSS TELEPHONE
PLANT IN SERVICE

SHOWN IN MILLIONS

DELL TELEPHONE COOPERATIVE, INC.
DELL CITY, TEXAS

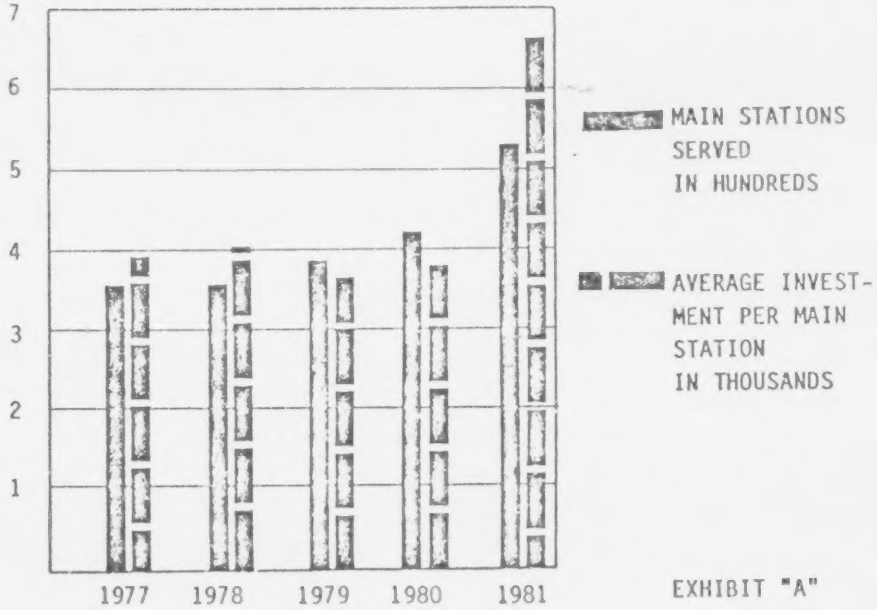
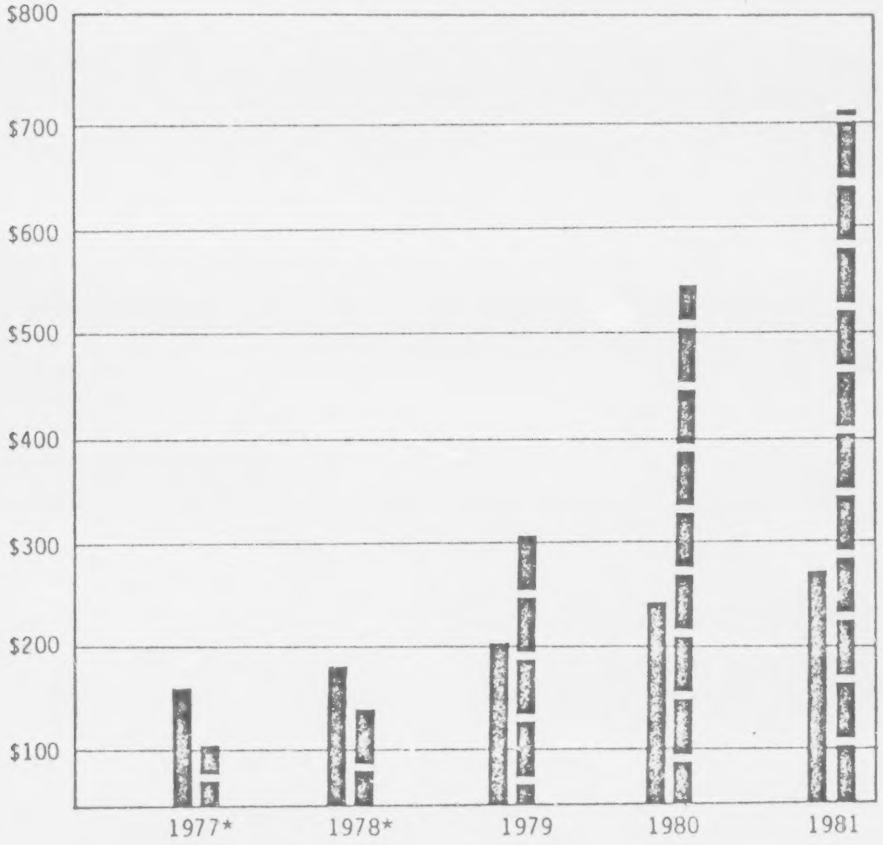


EXHIBIT "A"

COMPARISON OF LONG DISTANCE CHARGES BILLED TO CUSTOMERS
TO
TOLL REVENUES RECEIVED UNDER SETTLEMENTS AGREEMENT
1977 THROUGH 1981
(IN THOUSANDS)

DELL TELEPHONE COOPERATIVE, INC.



* BASED ON AVERAGE SCHEDULE SETTLEMENTS

▬ ACTUAL TOLL BILLED CUSTOMERS

▬ ▬ TOLL REVENUES BASED ON SETTLEMENTS

EXHIBIT "B"

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
DISTRICT OFFICE
P. O. Box 1420
Las Cruces, New Mexico 88004

IN REPLY REFER TO: 9
2800 (030)
NM 44874

July 19, 1982

CERTIFIED--RETURN RECEIPT REQUESTED

Dell Telephone Cooperative, Inc.
Right-of-Way Department
P. O. Box 678
Dell City, TX 79857

Gentlemen:

Rental charges have been computed on your right-of-way grant NM 44874 dated August 21, 1981. The rental and administrative charges are due within 30 days from receipt of this letter.

You may pay rental for one year; or, if you prefer, you may pay a lump sum rental for five years.

One-year Rental	$230.00
Five-year Rental	$960.00

Other Charges:

Advance Administrative Charge	$500.00
Post Permit Administrative Charge	$200.00
Less Amount sent with Application	$500.00

If the 1-year rental is selected, pay $ 430.00
If the 5-year rental is selected, pay $1,160.00

The Bureau of land Management reserves the right to update the rental charges whenever necessary to reflect changes in fair market value. However, our policy will be to update no more often that at 5-year intervals.

If you have any questions concerning the rental charges, please contact us. We would be happy to informally discuss them with you. You may also file written objections. They must be based on evidence that the rental charge does not represent current fair market value for the rights conveyed.

If a hearing is desired, it must be requested in writing to the District Manager, Bureau of Land Management, P. O. Box 1420, Las Cruces, NM 88004.

Sincerely yours,

Charles D Hodgin

Daniel C. B. Rathbun
District Manager
Acting

CHECK # ________ ACCT. # ________
DATE PAID ________ AUDITED ________
APPROVED BY ________ DATE RECV. ________

DEPARTMENT OF SOCIOLOGY AND ANTHROPOLOGY
CULTURAL RESOURCES MANAGEMENT DIVISION

Box [illegible]/Las Cruces, New Mexico 88003
Telephone (505) 646-2520 1447

NEW MEXICO STATE UNIVERSITY

INVOICE

Reference No. 1-4-21430 (TASK 212)

DATE: April 30, 1981

TO:
Mr. Frank Dottle
Dell Telephone
Box 678
Dell City, Texas 79837

ACCOUNT: 1-4-21430 (TASK 212)

SERVICES: "An Archaeological survey of a proposed telephone line near Timberon."

CHARGES:

Field Time: 2 1/8 day @ $250/day	$531.25
Writing Time: 2 days @ $175/day	350.00
Drafting Time: 2 days @ $115/day	230.00
Typing/Assembling: 1 1/2 day @ $110/day	165.00
Bookkeeping: 1/8 day @ $110/day	25.00
Supervision & Editing: 1/4 day @ $200/dau	50.00
Mileage: 377 @ .19¢/mile	71.63
Publication mailing costs	50.00
TOTAL	$1472.88

NOTE: All charges listed above are based on an 8 hour workday.

Please Remit To:

New Mexico State University
Business Office
Box 3AA
Las Cruces, New Mexico 88003

CHECK # 6947 ACCT. # 100.24 [illegible] 8023

DATE PAID 6-10 AUDITED ____

APPROVED BY 70 DATE RECV. 5-15-81

New Mexico State University
Business Office

Maysie Cross
Supervisor

NM 44874
2800 (943a-9)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
P. O. Box 1449
Santa Fe, New Mexico 87501

August 21, 1981

DECISION

RIGHT-OF-WAY GRANTED

Details of Grant

Serial number of grant:	New Mexico 44874
Name of Grantee:	Dell Telephone Cooperative, Inc. Right-of-Way Department P. O. Box 678 Dell City, Texas 79837
Date application filed:	March 25, 1981
Map designation:	T-569
Width of right-of-way:	16 feet
Permitted use by grantee:	Telephone line and related communications facilities (to provide additional communications service to an area in Otero County).
Authority for grant:	Public Law 94-579 dated October 21, 1976, Title V, (90 Stat. 2743).
Regulations applicable to grant:	43 CFR 2800
Date of grant:	August 19, 1981
Expiration date of grant:	August 19, 2011
Rental:	See Item 9

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 701 of the Director, Bureau of Land Management, dated July 23, 1964 (29 F. R. 10526), a right-of-way, the details of which are shown above, is hereby granted subject to the terms and conditions of the regulations contained in 43 CFR 2800, provisions of any other applicable law and implementing regulations as appropriate, and to the following:

1. All valid rights existing on the date of the grant.

2. All provisions of Executive Order 11246 of September 24, 1965, as amended. See Equal Opportunity Clause attached.

3. The General Equal Employment Opportunity/Affirmative Action Plan provisions. See attachment.

4. The right-of-way grantee will notify the District Manager prior to the date that construction is to begin and the date that construction has been completed. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

5. Prior to the beginning of construction, grantee will post the terms and conditions of this right-of-way, along with the stipulations in all field offices in conjunction with this right-of-way. Also, grantee will post the terms and conditions as stated in 43 CFR 2801.2 (45 F.R. 44528, and 44529 July 1, 1980) with the above information. Grantee will make available copies of the above information to all field inspectors for the purpose of informing the contractors.

6. In a manner suitable to the authorized officer, grantee will stamp the BLM serial number on all signs used to identify the right-of-way. This right-of-way will be identified at the point of origin and completion on public land.

7. Grantee will make no payment or other consideration to other users, licensees, permittees or lessees for any damage to or loss of natural vegetation, wildlife, mineral material, or for soil disturbance occurring on public lands, which result from operation, development or construction activities carried out under the authority of this right-of-way.

8. If, in its operations, the right-of-way grantee discovers any historic or prehistoric ruin, monument or site, or any object of antiquity subject to the Antiquities Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. Secs. 431-433), and 43 CFR Part 3, then work will be suspended and the discovery promptly reported to the District Manager. The Bureau will then take such actions as required by the District Manager. The right-of-way grantee will obtain, at his expense, a qualified archaeologist to examine and if necessary, excavate or gather such ruins or objects.

9. The right-of-way herein granted shall be subject to the express covenant that if other administrative costs and/or rentals are due, as indicated by an appraisal, they shall be paid upon request.

10. There is hereby reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under or adjacent to the lands involved in this grant.

11. This right-of-way may be renewed. If renewed, the right-of-way will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

12. A provision is hereby made requiring periodic review of the grant at the end of the twentieth (20th) year and at regular intervals thereafter not to exceed 10 years (43 CFR 2801.1-1 (i)).

The right-of-way for which this grant is issued involves the following described land:

T. 20 S., R. 13 E., N. Mex. Prin. Mer., New Mexico
  sec. 2, S½SW¼;
  sec. 3, lot 4, S½NW¼ and SE¼.

T. 20 S., R. 14 E., N. Mex. Prin. Mer., New Mexico
  sec. 4, NE¼SW¼ and S½SW¼;
  sec. 7, lot 3, S½NE¼, SE¼NW¼ and NE¼SW¼;
  sec. 8, N½N½, S½NW¼ and SW¼NE¼;
  sec. 19, lots 2 and 3, SE¼NW¼ and NE¼SW¼.

Aggregating a total length of 5.08 miles (1,625.60 rods).

Pauline T. Brown
Acting Chief, Lands Section

Enclosures (2)
1-Equal Opportunity Clause
2-DO Stipulations

cc:
Las Cruces, District Manager

Act of 1976

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
DISTRICT OFFICE
P. O. Box 1420
Las Cruces, New Mexico 88004

IN REPLY REFER TO:
2800 (030)
NM 43375

July 19, 1982

CERTIFIED--RETURN RECEIPT REQUESTED

Dell Telephone Cooperative, Inc.
Right-of-Way Department
P. O. Box 678
Dell City, TX 79837

Gentlemen:

Rental charges have been computed on your right-of-way grant NM 43375 dated July 20, 1981. The rental and administrative charges are due within 30 days from receipt of this letter.

You may pay rental for one year; or, if you prefer, you may pay a lump sum rental for five years.

One-year Rental	$1,025.00
Five-year Rental	$4,250.00

Other Charges:

Advance Administrative Charge	$1,000.00
Post Permit Administrative Charge	$ 400.00
Less Amount sent with Application	$1,000.00

If the 1-year rental is selected, pay $1,425.00
If the 5-year rental is selected, pay $4,650.00

The Bureau of land Management reserves the right to update the rental charges whenever necessary to reflect changes in fair market value. However, our policy will be to update no more often that at 5-year intervals.

If you have any questions concerning the rental charges, please contact us. We would be happy to informally discuss them with you. You may also file written objections. They must be based on evidence that the rental charge does not represent current fair market value for the rights conveyed.

If a hearing is desired, it must be requested in writing to the District Manager, Bureau of Land Management, P. O. Box 1420, Las Cruces, NM 88004.

Sincerely yours,

Charles D Hodgins

Daniel C. B. Rathbun
District Manager
Acting

DEPARTMENT OF SOCIOLOGY AND ANTHROPOLOGY
CULTURAL RESOURCES MANAGEMENT DIVISION

Box 5700/Las Cruces, New Mexico 88003
Telephone (505) 646-2520, 1442

Reference No. 1-4-21430 (TASK 204)

DATE: February 26, 1981

TO: Mr. Frank Dottle
Dell Telephone
Box 678
Dell City, Texas 79837

ACCOUNT: 1-4-21430 (Task 204)

SERVICES: An archaeological survey of 22 miles of proposed telephone line in southeastern, New Mexico.

CHARGES:	Field & Travel Time: 2 1/2 days, 2 person crew @ $405/day	$1,012.50
	Writing Time: 1 day @ $155/day	155.00
	Drafting Time: 4 hrs @ 115/day	57.50
	Typing/Assembling/Bookkeeping: 1 day 7 hrs @ $110/day	206.32
	Supervision & Editing Time: 3 hrs @ $200/day	75.00
	Mileage: 617 miles @ .19¢/mi	117.23
	Publication & Mailing Costs	20.00
		$1,643.55

NOTE: All charges listed above are based on an 8 hour workday.

Please Remit To:

NEW MEXICO STATE UNIVERSTIY
Business Office
Box 3AA
Las Cruces, New Mexico 88003

New Mexico State University
Business Office

By Maysie Cross
Maysie Cross
Supervisor

8024

HECK # 6689 ACCT. # ____

ATE PAID ____ AUDITED ____

8024

NM 43375
2800 (943a-9)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
P. O. Box 1449
Santa Fe, New Mexico 87501

July 20, 1981

DECISION

RIGHT-OF-WAY GRANTED

Details of Grant

Serial number of grant:	New Mexico NM 43375
Name of Grantee:	Dell Telephone Cooperative, Inc. Right-of-Way Department P.O. Box 678 Dell City, Texas 79837
Date application filed:	December 15, 1980
Map designation:	200-A, 215A, 218A, 219A and 219A-1
Width of right-of-way:	16 feet wide
Permitted use by grantee:	Telephone line and related communications facilities (buried and aerial cable)
Authority for grant:	Public Law 94-579 dated October 21, 1976, Title V, (90 Stat. 2743).
Regulations applicable to grant:	43 CFR 2800
Date of grant:	July 20, 1981
Expiration date of grant:	July 20, 2011
Rental:	See Item 9

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 701 of the Director, Bureau of Land Management, dated July 23, 1964 (29 F. R. 10526), a right-of-way, the details of which are shown above, is hereby granted subject to the terms and conditions of the regulations contained in 43 CFR 2800, provisions of any other applicable law and implementing regulations as appropriate, and to the following:

1. All valid rights existing on the date of the grant.

2. All provisions of Executive Order 11246 of September 24, 1965, as amended. See Equal Opportunity Clause attached.

3. The General Equal Employment Opportunity/Affirmative Action Plan provisions. See attachment.

4. The right-of-way grantee will notify the District Manager prior to the date that construction is to begin and the date that construction has been completed. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

5. Prior to the beginning of construction, grantee will post the terms and conditions of this right-of-way, along with the stipulations in all field offices in conjunction with this right-of-way. Also, grantee will post the terms and conditions as stated in 43 CFR 2801.2 (45 F.R. 44528, and 44529 July 1, 1980) with the above information. Grantee will make available copies of the above information to all field inspectors for the purpose of informing the contractors.

6. In a manner suitable to the authorized officer, grantee will stamp the BLM serial number on all signs used to identify the right-of-way. This right-of-way will be identified at the point of origin and completion on public land.

7. Grantee will make no payment or other consideration to other users, licensees, permittees or lessees for any damage to or loss of natural vegetation, wildlife, mineral material, or for soil disturbance occurring on public lands, which result from operation, development or construction activities carried out under the authority of this right-of-way.

8. If, in its operations, the right-of-way grantee discovers any historic or prehistoric ruin, monument or site, or any object of antiquity subject to the Antiquities Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. Secs. 431-433), and 43 CFR Part 3, then work will be suspended and the discovery promptly reported to the District Manager. The Bureau will then take such actions as required by the District Manager. The right-of-way grantee will obtain, at his expense, a qualified archaeologist to examine and if necessary, excavate or gather such ruins or objects.

9. The right-of-way herein granted shall be subject to the express covenant that if other administrative costs and/or rentals are due, as indicated by an appraisal, they shall be paid upon request.

10. There is hereby reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under or adjacent to the lands involved in this grant.

11. This right-of-way may be renewed. If renewed, the right-of-way will be subject to regulations existing at the time of renewal and such other terms and conditions deemed neccssary to protect the public interest.

12. A provision is hereby made requiring periodic review of the grant at the end of the twentieth (20th) year and at regular intervals thereafter not to exceed 10 years (43 CFR 2801.1-1 (i)).

The right-of-way for which this grant is issued involves the following described land:

See Attachment "A"

Chief, Lands Section

Enclosures

cc:
Area Manager, FRAH

Act of 1976

NM 43375
2800 (943a-9)

ATTACHMENT "A"

Land Description

T. 24 S., R. 17 E.,
sec. 27, S½SW¼;
sec. 34, W½NE¼, SE¼NE¼, E½NW¼ and N½SE¼;
sec. 35, S½NE¼, SE¼NW¼ and N½SW¼.

Containing 12,925.00 feet, more or less.

T. 23 S., R. 18 E.,
sec. 29, NE¼SW¼, E½SE¼ and SE¼SE¼;
sec. 33, W½NW¼, SE¼NW¼, E½SW¼ and W½SE¼.

Containing 8,850.00 feet, more or less.

T. 24 S., R. 18 E.,
sec. 3, lot 4, S½NW¼, NE¼SW¼, W½SE¼ and SE¼SE¼;
sec. 4, lots 1 and 2;
sec. 10, NE¼NE¼;
sec. 11, W½W½;
sec. 14, W½W½;
sec. 21, S½S½ and NE¼SE¼;
sec. 22, SE¼NE¼, N½S½ and SE¼SE¼;
sec. 23, NW¼NW¼, S½N½ and NW¼SW¼;
sec. 24, N½NE¼, E½NW¼ and SW¼NW¼;
sec. 26, SW¼SW¼;
sec. 27, E½E½;
sec. 28, NW¼NW¼;
sec. 29, E½SW¼;
sec. 30, lot 4, SE¼NE¼, SE¼SW¼, N½SE¼ and SW¼SE¼;
sec. 31, lot 1;
sec. 34, NE¼NE¼;
sec. 35, W½W½.

Containing 64,890.00 feet, more or less (64,820 feet of buried cable; 70 feet of aerial cable)

T. 25 S., R. 18 E.,
sec. 11, W½W½;
sec. 14, W½W½;
sec. 23, W½W½ and SE¼SW¼;
sec. 27, S½SW¼;
sec. 34, lot 2, N½NW¼, SE¼NW¼ and NE¼SW¼.

Containing 30,895.00 feet, more or less.

T. 26 S., R. 18 E.,
sec. 3, SW¼SW¼;
sec. 9, E½SE¼;
sec. 10, W½NW¼.

Containing 4,820.00 feet, more or less.

Aggregating a total of 122,380.00 feet, more or less, (23.18 miles) (7,416.97 rods) (44.95 acres).

Senator **Wallop**. Thank you very much, Mr. Dottle.

Mr. Ebaugh, we will put you up first now.

STATEMENT OF HAROLD C. EBAUGH, MANAGER, TRIANGLE TELEPHONE COOPERATIVE ASSOCIATION, INC., HARVE, MONT.

Mr. **Ebaugh**. Thank you. You can see why I asked that they go forward, and, Senator Melcher, I am happy to see you again. I guess you know my name, it is Harold Ebaugh. I am from Havre, Mont. And I believe there is a statement that was filed on my behalf.

I would like to call attention to a couple of errors in it.

Senator **Wallop**. Excuse me, just before you go on, Mr. Dottle, what you asked to be included in the record will be included in the record. Excuse me.

Mr. **Ebaugh**. The second reason I wanted Tom to go on it was my understanding he was going to try to catch a plane out of here back to Dickinson at 4 o'clock or 4:30, but I don't know whether he will make it or not.

Senator **Wallop**. If you want to leave——

Mr. **Dottle**. It is not necessary, no.

Mr. **Ebaugh**. On page 5, I would like to be sure that the word has been changed after "10 years authority for Federal investment in the capital stock" instead of "investigation." This was dictated over the phone from Montana down here and I think my English was not the best or the girl forgot.

Also down there is the word change where "the cable it runs out to the subscribers" instead of "of the subscribers".

And on the back page, page 6, where willingness appears, be sure that it is unwillingness, "the Bureau of Land Management's unwillingness to cooperate with."

I would only try to highlight what has been said here. Time is of essence to all of you, I know. I want to bring out a point that the good Senator from Montana mentioned today that we are in the process in our rural telephone cooperative of building into the east Boulder and the Boulder River country where we will be going up about 20 miles, I believe or so, of Forest Service land where there is not much up there. And I am sure the Senator has been up by the Boulder River and I am sure he knows it is pretty tough to get up there. It is solid rock all of the way through and we are going to have problems getting up there.

Over all of the years I have been in the utility business, which has been since 1936 and I guess that is getting up to 48 years in the utility business, 36 of them have been in the rural electric and of that 36, I have had 25 in the telephone business.

I happened to manage both electric and the telephone and I have managed a commercial company and I have fought easements. We have never paid for right-of-way easements in either the electric or telephone in Montana. And as our Senator stated people have cooperated.

We have formed committees within our State association to meet with those two agencies within the State to try and get some audience with them and reconsider their policies within our State. We have had fairly good luck with BLM but the Forest Service is a lot tougher to deal with and they have stated right out that they don't plan on changing their minds on this policy.

I am sure that the Senator has got a copy of the letter from Mid-Rivers Telephone that was sent to our national association, to our national State association and I think that it shows a copy went to you, Senator Melcher, from Jim Beam over at the Mid-Rivers Telephone Cooperative. I was glancing through that, I just got it in the mail, and I was real interested and just to add a couple of things in here that have not been said, this is a telephone cooperative in your home town in the circle area. If you have not had a chance to read it, it is classic. I thought it was real good. It brings out some good points.

"We are enclosing our check"—this is from the cooperative to Mr. Edward D. Stark, chief of the land adjudication section of the Bureau of Land Management in Billings, Mont., our district office—"We are enclosing a check in the amount of $25 for advanced payment of rental and we hereby register a protest for having to pay this sum." I thought that was classic.

"Also enclosed is our check for $80 to cover the requirements for the monitoring and we also protest in this." He has got more guts than I have because we sent our check in without protesting it.

I have no great objection to paying for the administrative cost or the monitoring. I mean it costs all of the people money to do things. I would endorse a condition where we would have to pay the actual fee for administrative work if it does not get unreasonable. But he says here that it is impossible for us to understand why the BLM has chosen to inflict the attempt that the Bureau has upon us. It is a well-known fact that whenever the Government starts to act like a business, inevitably the cost escalates about 200 percent.

I thought that was quite a thing. He says why should the Bureau go ahead and charge us for the property we have entrusted to them to manage for us. I think it has been well stated the costs involved in these easements if the fees as we have been afforded are put into effect.

My particular company of Triangle Telephone, which is about the second largest, I think we are about the largest telephone cooperative in membership in Montana, but Mr. Beam in here covers about 6,000 more square miles of area. We cover about 18.5 thousand square miles and serve 7,500 in telephone rural subscribers.

We have an average of 1.2 subscribers per mile of telephone line. We have 252 and 25 miles of line on the BLM, which are under permit. And we have had them under permit every since we have been in business. And if they were to go ahead and put into effect the $80 per mile we would have about $4,264 a year additional fees that we would have to pay for that right-of-way.

So as we stated, we cover a lot of area and over the years I have appeared in many congressional hearings and one of the greatest things I can tell about Montana is that we are quite a ways apart and every farm and ranch out there has its own tom cat. That is how far we are.

So it is kind of hard to see any justification. The secretaries have discretionary power to waive this. We are in support of this bill that we are testifying on and we think we should have it and I would have no objection representing the Montana Telephone Association that has a lot of other independents, commercial type companies. I would have no objection to them in the rural areas, where the BLM is is in the rural, not in town, where they have heavy density, I would have no objection for them having free easements either. I think it is real difficult to serve rural America.

And as Tom so ably stated with the consent decree and the change in our separations, you ain't seen nothing yet of what rural telephone rates are going to be, if all of those things come into being and we have to lose and will lose considerable amount of revenue on our pole separations with our interconnecting companies. And our rural rates are going to go up tremendously, I am afraid, and why add additional costs to us to cover it.

One funny thing about this thing is that if we go into a piece of land that the BLM or the Forest Service to serve a Forest Service facility on that land, they do not charge us for it, but if we cross it and get a foot on the other side, we have to pay for it. It does not make sense.

I would be happy to answer any questions.

[The prepared statement of Mr. Ebaugh follows:]

STATEMENT OF HAROLD C. EBAUGH, MANAGER
TRIANGLE TELEPHONE COOPERATIVE ASSOCIATION, INC.
HAVRE, MONTANA
on behalf of
THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
before the
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
of the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Harold C. Ebaugh, and I am the Manager of the Triangle Telephone Cooperative Association, Inc. of Havre, Montana, and President of the Montana Telephone Association. Montana Telephone Association is a statewide trade association comprised of twelve independent cooperative and commercial telephone systems serving the state of Montana. Today, I also represent the National Telephone Cooperative Association (NTCA). NTCA is a national non-profit organization comprised of over 360 cooperatives and other small telephone systems providing service in rural areas in over 40 states and territories. Most of these systems obtain capital financing under the loan programs of the Rural Electrification Administration (REA).

I would like to thank the Subcommittee for the opportunity to testify concerning S. 894. The bill addresses a problem with which the Montana Telephone Association and NTCA have been wrestling for five years. On behalf of both organizations and their members, I want to thank the Senators for agreeing to hear about our difficulties.

Triangle Telephone Coop serves about 18,500 square miles in North Central Montana. We have about 7,500 subscribers, and have an average of one-point-two subscribers per mile of telephone line. Triangle was started in 1954 by a group of area residents who were unable to obtain telephone service at reasonable rates from a commercial telephone

$264.12 for Mr. Boardman. The four miles of line serves six stockwells. In reviewing our billing records, we find that the total revenue for those six stockwells in the calendar year 1980 was $648.06. Adding to their power bill a right-of-way assessment from the Forest Service of $264.13 raises their total power cost 41%, which certainly could be considered inflationary and an undue burden for the use of the permit.

The second case was a permit for the home site of Leonard Whisler which was at the out set to be a stockwell and then later on to become a home site. In this case there was an extension of 1.476 miles which was charged out at an annual fee of $94.00 per year. For his initial service of electric power, Mr. Whisler will be charged a gross charge of approximately $108.00 per year. The Forest Service charge will increase his power bill by 87%.

We think that there is a basic difference in the Federal law which applies to the electric distribution cooperative, which should be recognized by every Federal agency. Our purpose is to provide power and electric energy to every rural consumer who requests it. We have been able to serve customers which would not be profitable for private power companies because we have kept our costs at a minimum. We consider the annual rights-of-way fees being charged by Federal agencies to be exorbitant and to feed inflation in a manner which should not be fostered by agencies of the Federal Government.

As a matter of fact our members give, at no charge, rights-of-way to their neighbors for power lines which cross their property. This is exemplified in a letter from a rancher on company because the low population density of the area made telephone service unprofitable. We had party-line service for many years, but in the 1970's, using loan funds from REA, we up-graded all of Triangle's lines to one-party service.

Triangle recently acquired an additional service area in South Central Montana from a commercial telephone company. The acquired exchanges cover 6 counties, and much of the system is still on 2, 4, or even 10-party line service. The funds to upgrade this service to single-party service will have been borrowed from REA, also, as the cooperative cannot afford to pay the high cost of commercial borrowing.

As you are aware, Mr. Chairman, the spirit of cooperation is very strong in our part of the country. In nearly 30 years of operation, Triangle has not had to pay for easements across any private land. This includes easements across land owned by someone other than the subscriber to be served. The community believes that universal telephone service is in the public good and charging for easements would be detrimental to all. The State of Montana, which owns property in our service area as well, does not charge for easements across its holdings.

Until recently, Triangle also had access to land controlled by the Bureau of Land Management (BLM) and the Forest Service (FS) free of charge. Since Triangle crosses 300 miles of BLM land and several miles of FS land, free easements from these agencies have helped considerably to hold costs down. This in turn has enabled Triangle to offer universal telephone service in our service area at reasonable rates. To my knowledge, other coop telephone systems in Montana have had the same experience -- generally, easements across BLM and FS lands have been free.

The passage in 1976 of the Federal Land Policy and Management Act appears to have triggered a change in this long-standing arrangement. The Act included provisions for charging businesses that cross Federal lands for rights-of-way. The Act also provided BLM and FS the discretion to reduce these fees or to charge nothing at all for easements sought by non-profit associations or corporations which are "not themselves controlled or owned by profit-making corporations or business enterprises, or to a holder when he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned." (43 USC 1764 (g))

In 1977, BLM and FS proposed regulations implementing the Act. In developing these regulations, the agencies opted not to exercise the discretion that Congress gave them. Both agencies proposed instead to charge coops fair market value for rights-of-way across Federal lands. BLM explained its decision in its proposed rulemaking, stating:

> "As a matter of equity, we believe it is inappropriate to charge lesser fees or grant free use when the holder is engaged in similar business and follows practices comparable to private commercial enterprises. For this reason, REA cooperatives and municipal utilities whose principal source of revenue is customer charges will, hereafter be charged fair market value rental fees."

NTCA and other representatives of telephone and electric cooperatives filed comments protesting the BLM and FS decision, and met with officials from the agencies in an attempt to convince them to reverse it. Unfortunately, these efforts were in vain, and the final regulations, published in 1980, required cooperatives to pay fair market rates for crossing public lands. Subsequent efforts to discuss this matter with agency personnel have also yielded no change in the policy.

We believe that the decision to charge cooperatives fair market value for easements across Federal lands is based on a fundamental misunderstanding of the nature of the coop. Furthermore, this policy is in direct conflict with the goals of the Federal government as articulated in the 1934 Communications Act and the Rural Electrification Act. Finally, we feel that the implications for the rural telephone service of this policy deserve public discussion.

A Fundamental Misunderstanding of Cooperatives

The decision to charge fair market value to cooperatives seeking to cross Federal lands appears to be very misguided. Certainly cooperatives meet the criteria in the Act of an organization eligible for reduced charges for easements: coops are operated on a not-for-profit basis and are not controlled or owned by profit-making corporations or businesses. BLM's rationale for its policy, that coops obtain their revenue from customer charges and therefore follow comparable business practices, is simply untrue. First, coops operate at cost, and their "investors," the subscriber-owners, earn no return on their capital.

Second, coops are required by their by-laws and the state laws under which they are chartered to credit their members with any amounts received above actual costs instead of paying such amounts to their stockholders. By eliminating profits and the income taxes based on profits, the coops meet the additional statutory criteria -- providing at reduced charges a valuable benefit to the public and to the program of the Secretary of Agriculture.

Cooperatives began where commercial companies could not, or would not provide service. They do not compete with other businesses in providing services, first, because utilities have a legal monopoly in most cases, and second, because they have a natural monopoly. The rural market could not support two such entities.

Conflict with National Goals of Universal Service and Reasonable Rates

The BLM and FS policy is in direct conflict with national goals established in the 1934 Communications Act and the Rural Electrification Act as amended. Both Acts affirm a national goal of universal telephone service at reasonable rates. Both Acts have been under Congressional consideration in recent years. S. 898, an amendment to the Communications Act, was passed by the Senate last year; in 1981, Congress also approved amendments to the RE Act which extended for another ten years authority for Federal ~~investigation~~ investment in the capital stock of the Rural Telephone Bank. The concept of universal telephone service at reasonable rates has invariably won strong support from both House and Senate in any consideration of amendments to either Act. Any threat to the viability of telephone service in high-cost rural areas also threatens the value of the national communications system as a whole network.

Implications for Rural Telephone Service

The costs of providing telephone service in rural areas are already high. The average telephone cooperative must invest about $1,100 for each subscriber it serves. By contrast, the Bell system invests approximately $835 for each subscriber. Most of the coops' added costs is in outside plant, the cable it runs out ~~of~~ to the subscribers' homes. With high costs for easements across Federal lands, many coops will consider circling around the Federal lands to avoid paying annual fees where this is feasible. This will necessitate using additional cable, which will then cost the subscribers more and use up valuable mineral resources. Either way, this policy will add to the costs of telephone service.

Depending on the system, the cost of the easements could add significantly to the cost of rates. Telephone industry studies have found that as little as a 20% increase in monthly rates causes a significant drop in the number of subscribers, as those on fixed and low incomes are forced to stop service.

The BLM and FS policy of charging for easements will certainly encourage private landowners to charge for easements across their property, as well. This would have a serious impact on rural telephone rates. Most coops have literally thousands of easement agreements; having to pay charges on these could literally put many coops out of business.

Mr. Chairman, Members of the Subcommittee, we strongly support the thrust of S. 894. It seems clear that a legislative solution will be necessary to resolve the problems of easements across federal land by coops.

We are grateful that the House and Senate addressed the special needs of rural cooperative utilities in the 1976 Act. We are puzzled and disappointed by the apparent ~~willingness~~ Unwillingness of the BLM and the FS to consider the implications of their policy decision on rural customers. We feel that if we are to protect universal service at reasonable rates, if we are to keep serving subscribers on low and fixed incomes, in fact, if we are to stay in business at all, we will need your help.

Thank you very much for your consideration of our problem.

Senator WALLOP. Senator Melcher.

Senator MELCHER. Well, first of all, I am wondering where Dell, Tex. is, Dell City, Tex.

Mr. DOTTLE. It is 100 miles west of Carlsbad and 100 miles east of El Paso.

Senator MELCHER. A 100 miles east of El Paso.

Mr. DOTTLE. A 100 miles east of El Paso and a 100 miles west of Carlsbad, New Mex. It is a 200 mile round-trip to get a haircut or a tooth pulled.

Senator MELCHER. Well, then you say the cooperative serves——

Mr. DOTTLE. We serve two counties in Texas and two counties in New Mexico. We serve Hudspeth and Culberson in Texas and Eddy and Otero in New Mexico.

Senator MELCHER. Your subscribers, when you say our subscribers, do you mean just in your cooperative or is this general that our rural telephone cooperatives, the cost is 60 percent above the national average?

Mr. DOTTLE. Yes, it is.

Senator MELCHER. For all telephones?

Mr. DOTTLE. For everything in our system.

Senator MELCHER. So when you are building a line, and this is good to be reminded of this every now and then, when you are building a line to a few families, you mentioned one place in here that it is going to cost the customers—I don't know what it will cost the customer, but it is going to cost the cooperative a $1,786 per year loss for each of those new customers. Did I read that correctly?

Mr. DOTTLE. We will lose $1,786 in a 5-year period——

Senator MELCHER. Every 5 years?

Mr. DOTTLE. Right.

Senator MELCHER. But you will pick them up anyway.

Mr. DOTTLE. We already have. That is what part of this——

Senator MELCHER. You have already picked them up?

Mr. DOTTLE. Yes, we have. We just got a bill from BLM for an additional $5,810 and that will cause a total price for eight subscribers for 5 years to be $10,426. We will lose the entire local revenue of those eight subscribers plus $1,786.

We would have to raise those people's rates 100 percent plus make up the difference of $1,786 in a 5-year period.

Senator MELCHER. You are going to absorb that. What are you going to do?

Mr. DOTTLE. We will just have to lower our general fund by that amount until we can come up with something else.

Senator MELCHER. As of now the cooperative is just going to absorb that cost.

Mr. DOTTLE. We are just going to have to absorb it. Otherwise we are going to have to go for another rate increase and we would probably drop some more customers. So what it is doing to us is discouraging us from building for any more people who are in Federal lands, or we have to go through it. There are an additional 25 subscribers there that we would have to bury 80 miles of line through Forest Service and BLM lands and at this price.

Senator MELCHER. At 3 miles per customer?

Mr. DOTTLE. Right.

Senator **Melcher**. You make a case very well. I note you also talked about the archaeological costs and so forth. I think, rightly or wrongly, the Forest Service, the Bureau of Land Management have interpreted previous acts of Congress to require all of this. I sometimes wonder if that is true. I am not sure it is. It just does not seem to me that Federal law requires that an archaeological study, that you go down a burial pit that has been plowed over and carved out before, to bury the cable. In burying that cable how deep do you go?

Mr. **Dottle**. They require us to go 3 feet.

Senator **Melcher**. What are you required to do on private land?

Mr. **Dottle**. We would bury it 2 feet and it would cost us a lot less money and it would not make that much difference.

Senator **Melcher**. And 2 feet has proven to be sufficient?

Mr. **Dottle**. Yes, sir.

Senator **Melcher**. Well, maybe we should look at some of the other points. I sure want the bill to pass. Maybe we should look at some of the other points as we are going through this. Maybe we ought to be reviewing all of these requirements and I think it is part of our job.

Harold, I think that, I will say it to all three of you, I will not just pick on Harold. You have made a good case that it is apparent to me of what is embodied in this bill and it certainly ought to be enacted into law.

Thank you very much. Thank you, Mr. Chairman.

Senator **Wallop**. Thank you, Senator. I am sure from what you have said that the problems are clear and the problems are acute as described by you. I think we we have a lot of people in this Congress who have not any conception of the distances that are involved and the difficulties that are involved in the kind of service you provide for people who have no other recourse but that service which they get from you or none at all.

There are a few things that a willing Government ought to be able to do for some of those who live in different circumstances than most of the rest of the country. Thank you.

Mr. **Harris**. Mr. Chairman, I would also like to have shown in the record that I have also paid these fees under protest, along with a $15 fine on each one of them, because we were protesting and I did not get it in on time. And so I had to pay a $30 fine along with the assessments as they put them out.

Senator **Wallop**. Thank you.

The next panel is Mr. Kirk Betts, who is a partner in the firm of Ely, Ritts, Pietrowski & Brickfield, and who is counsel to Deep East Texas Electric Cooperative, Houston County Electric Cooperative, Jasper-Newton Electric Cooperative, Mid South Electric Cooperative and Sam Houston Electric Cooperative; Mr. Vernon D. Dalton, board of directors to the National REA Cooperative Association, Clover Valley, Wells, Nev.; Ray Jilek, president, board of directors of West Plains Electric Co-op, Inc., Dickinson, N. Dak.; Larry Backstrom, manager of the Arrowhead Electric Co-op, Inc., Lutsen, Minn.; Mr. Warren Fraser, who is the manager of the Tri County Electric Association, Sundance, Wyo., and with whom I am familiar and glad to welcome here.

Mr. Betts.

STATEMENT OF KIRK HOWARD BETTS, ON BEHALF OF DEEP EAST TEXAS ELECTRIC COOPERATIVE, INC.; HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.; JASPER-NEWTON ELECTRIC COOPERATIVE, INC.; MID SOUTH ELECTRIC COOPERATIVE ASSOCIATION; AND SAM HOUSTON ELECTRIC COOPERATIVE, INC.

Mr. BETTS. My name is Kirk Howard Betts. I would like to correct for the record that I am with the law firm of Ely, Ritts, Pietrowski & Brickfield.

Senator WALLOP. I am sorry, it is shown here as Brookfield.

Mr. BETTS. I have a prepared written statement which I would like to submit for the record.

Senator WALLOP. By all means, we would be happy to receive it.

Mr. BETTS. Thank you. You have indicated the long list of clients I represent. Just for the record, I would like to show you on the map where we are in Texas. We are just north of Houston and go up to Nacogdoches. Our service area includes 2,700 square miles of national forest land and you can kind of get an idea from this map of the concentration of our combined five service areas and how much national forest land is really in there.

I bring it to your attention because we have been trying to explain it to the National Forest Service, who consistently seems to believe that that really does not matter when it comes to determining equitable and the public interest considerations under section 504(g).

Unlike some of the other cooperatives here that have said they have paid under protest, we have advised our clients not to pay. We agree with Mr. Melcher's approach. We think the act is very clear on its face and the legislative history supports the proposition that the rural electric cooperatives never intended to pay or if they were intended to pay the Secretary should exercise some discretion and take into account equitable and other interest considerations.

We have raised a number of appeals that we started down in Texas with the local Forest Service office and taken to the Atlanta office, the regional Forest Service. Now we are going before the chief of the Forest Service next week.

I wish I had Senator Melcher as a reference for my next brief, but I would like to submit for the record the brief that we have filed in Atlanta. It explains a number of points that Senator Melcher raised with BLM people earlier.

In fact, I would like to add some ammunition if I could. There are a number of differences between IOU's and rural electric cooperatives. I represent a co-op that is also in a retail business down in Texas and just an example, I settled a case on Monday. We were given a 9.25 percent rate of return.

Another example is next week I am trying a rate case with an investor on utility also in Texas and the staff down there is recommending a 17.1 percent rate of return. We are both in the same service area and we seem to be getting a little bit different treatment.

Another point, we have had a number of times when I have been to the co-ops to get a call from the investor on the utility asking us to pick up a customer out in rural areas. They don't want to extend their lines. We do pick them up because we need the customers.

We pick them up because the REA gives us special funds to do that. We can borrow money through the REA funds at 5 or 7 percent. We do that. But the IOU's don't help those customers.

In fact the danger is as the costs go up in serving rural areas, we have, for example, 5.5 customers per mile, the IOU's that serve in our area have 42 to 50. Our construction costs are essentially the same per mile of line, but we can't spread them out as easily as the IOU's.

The concept that the BLM and the Forest Service seem to have is that we are basically the same thing: We are electric utilities. We sell power, but we have certain constraints that the IOU's do not have. Texas, again, under the Texas Electric Cooperative Act, we are not even allowed to go into cities that have central station service to compete for high density business.

We are specifically excluded from that and statutorily required to only serve in rural areas. We cannot make a profit. If we make any money, we have to turn it back to our members. So we are not the same at all. And I sure would like to have the Forest Service understand that. They don't want to recognize that.

I appreciate Mr. Melcher's comments towards that effect.

The importance of S. 894 is really in our minds to clarify the intent of Congress when they passed the original act in 1976. I think it will resolve the very serious question of the arbitrary and capricious actions the Secretary has taken to specifically exclude rural electric cooperatives from any consideration for exemption or even reduced fees as the act would provide.

It would also resolve the question of whether the Secretary can arbitrarily and capriciously revoke existing permits as he has done in our area. He has required all of our permits to go with the charge. There are two sections in the act that specifically provide that it is not supposed to affect existing permits, permits in existence at the time of passage.

Nevertheless, charges are being placed on every single one of our rights-of-way.

And, finally, on the fair market value of the use, what we are finding is that we are getting charged, depending on where the coop is in relation to a lake or high density residential area, between $25 and $110 per acre. They base it on a theory that you take 5 percent of the fair market value of the land and the fair market value of the land is determined by taking the highest and best use. To be realistic about it, it is always going to be forest land as long as the national forest holds it, and it ought to be based on forest land prices, if there is such an analysis, and then take what the market would do under similar circumstances.

We don't normally pay for distribution line rights-of-way. Our coops have reimbursed members from time-to-time for transmission line rights-of-way, because of the burden that it puts on the property, but the rules of each one of these five co-ops specifically provides that every member must contribute a right-of-way for any line to serve him as well as other members of the co-op.

The Forest Service—we serve 50 meters for the Forest Service. As a matter of fact, the problem that my co-op managers tell me that they actually will wind up paying more for the Forest Service, for the rights-of-way than they are going to get back from them in fees from the electricity that they deliver.

I think that is an important equitable consideration and it was a point that was raised before.

Finally, one of the other problems we have is that the Forest Service, as I say here, has a high density of land, but there are other Federal agencies that are operating in that part of Texas and they do not charge. The question comes to my mind and the co-op manager's mind, how come the Forest Service gets the money for easements that we have had here for 30 years and have always mainatined and have always had good relations.

We service their plants; we service their ranger towers. We don't make money off of those lines. How come the Corps of Engineers does not charge us? How come the Army does not charge us? If Congress is going to be fair, you have to be consistent and it should not just be Forest Service lands that are subject to charge.

We support the bill. We want to see no charge at all. We would like that clarification as soon as possible. We are paying a heavy penalty for refusing to pay and anything you can do to keep that penalty from growing any more would be deeply appreciated.

Thank you for the opportunity to come before you today and testify on behalf of the bill.

[The prepared statement and a subsequent submittal from Mr. Betts follows:]

Statement of
Kirk Howard Betts

On Behalf of
Deep East Texas Electric Cooperative, Inc.
Houston County Electric Cooperative, Inc.
Jasper-Newton Electric Cooperative, Inc.
Mid-South Electric Cooperative Association
Sam Houston Electric Cooperative, Inc.

My name is Kirk Howard Betts. I am a partner in the Washington firm of Ely, Ritts, Pietrowski & Brickfield. The firm practices before various federal and state regulatory agencies on a variety of natural resources matters.

I am counsel for five rural electric cooperatives located in East Texas. They are Deep East Texas Electric Cooperative, Inc., Houston County Electric Cooperative, Inc., Jasper-Newton Electric Cooperative, Inc., Mid-South Electric Cooperative Association, and Sam Houston Electric Cooperative, Inc. These five cooperatives, ranging in size from 12,000 members to over 40,000 members, among them serve more than 101,000 residential, business, industrial, state and federal government consumers in rural areas of east Texas. They have electrified 17,347 miles of distribution line and 257 miles of transmission line.

Their combined service areas include over 2,700 square miles of the Sabine, Angelina, Sam Houston, and Davy Crockett National Forests. These are the only national forests in Texas. Each cooperative has already been affected by the enactment of the Federal Land Policy Management Act ("FLPMA"), and the actions taken by the Forest Service to implement the Act. The cooperatives have been billed $31,804 for a total of less than 1.5 square miles of rights-of-way across portions of these four forests, and have been advised to expect an increase in the fees as the easements are re-evaluated.

The cooperatives have asked me to appear today to advocate the passage of legislation which clarifies section 504(g) of FLPMA to exempt rural electric cooperatives from charges for the use of rights-of-way across federal lands. We are grateful for the opportunity to appear before the Subcommittee to discuss S. 894, and to present our reasons why it is imperative to enact this amendment as soon as possible.

The need for clarification of section 504(g) is obvious. The Forest Service has interpreted the language of this section to exclude rural cooperatives from consideration for free use, contrary to what we believe to have been the intent of Congress. We believe that the purpose of S. 894 should be to clarify section 504(g) of the Act, thereby incorporating into the Act the original congressional intent.

Passage of clarifying legislation would resolve numerous legal and equitable problems which have resulted from the implementation of Title V of the Act. For example, under the statute and regulations as they have been implemented:

- The Secretary of Agriculture has specifically excluded rural electric cooperatives from consideration for exemption from or reduction in fees. 36 C.F.R. § 251.57(b). The Secretary has taken this position notwithstanding the fact that all of the cooperatives are incorporated as nonprofit corporations in Texas.

- The regulations prohibit local Forest Service representatives from exercising any discretion whether the charges are inappropriate.

- The Forest Service has given the Act retroactive effect and is charging for rights-of-way for all lines, including those lines which were in existence prior to the passage of FLPMA.

- Notwithstanding the language of sections 509(a) and 701(a), which implicitly limit the right to amend any permit for a right-of-way in existence at the time of passage, the Forest Service has amended permits issued prior to the enactment of FLPMA in order to charge.

- The Forest Service has derived a formula for determining the user fee which is based on a percentage of the land value. The resulting fee has no correlation to the statutory requirement that such charges reflect the "fair market value of the use."

- The Forest Service and Bureau of Land Management have interpreted the Act differently. BLM, for example, supports our view that only post-enactment rights-of-way are subject to charge, while the Forest Service is charging for all rights-of-way. Other federal agencies, like the Army Corps of Engineers, do not charge for rights-of-way.

- The cooperatives are being charged for rights-of-way even where the lines are used primarily for Forest Service facilities.

- The Forest Service's annual fees frequently amount to more than the total revenues derived from Forest Service facilities. As a result, the Forest Service is receiving electricity substantially below what it costs the cooperative and its members to provide that service.

- Finally, the Forest Service has construed Title V of FLPMA as a congressional repudiation of the policy of encouraging rural electrification.

It is our view that section 504(g) entitles rural electric cooperatives to be exempt from the annual charge. Read together, sections 504(g), 103(f) (defining right-of-way), and 501(a) (listing uses), leave little doubt that rural electric cooperatives should be eligible for free use. Nevertheless, as a result of the administrative interpretation of the Act, we recognize the need for legislation to clarify this section.

The Forest Service has argued that the federal government is the only entity that should not be subject to charge. At every opportunity, the Forest Service cites the Senate report accompanying S. 507, S. Rep. No. 92-583, 94th Cong. 2d Sess. 73 (1976), for authority for this proposition. Its reliance is misplaced, however. The premise of the Senate bill -- that everyone except the federal government should pay an annual fee -- did not survive in conference. The conference committee repudiated that premise, and adopted the House language, which provided for qualified free use. It was this language, not the Senate's language, which was approved by both Houses on final passage. Therefore, the statute does authorize the issuance of free permits for rights-of-way for rural electric cooperatives which are "nonprofit corporations which are not themselves controlled or owned by profitmaking corporations." FLPMA § 504(g).

It is the overly restrictive definition of "nonprofit corporation" in the regulations, 36 C.F.R. § 251.57(b)(2), and the unfounded conclusion that cooperatives "follow practices equivalent to commercial enterprise," 44 Fed. Reg. 29114 (1979), and are in direct competition for business that are at the heart of the problem. The narrow definition of "nonprofit corporation" is not supported by the statute or its legislative history. With regard to the competitive standard disclosed in the comments to the regulations, from my experience, I can testify that the only similarity is selling electricity. In Texas, the ability to compete for new business is restricted, and we know for a fact that investor-owned utilities do not want to compete for business in sparsely populated rural areas because the costs are too high. To illustrate, the investor-owned utilities in our service areas have an average density of 42 to 50 meters per mile of line; the cooperatives average 5.5 meters per mile of line. Neither the statute nor its legislative history support the Forest Service's interpretation.

Absent congressional intervention through the passage of S. 894, the Forest Service will continue to ignore important equitable considerations which militate in favor of free use. We have attempted to raise several arguments concerning the inequities of the charges because of our unique circumstances. As I mentioned earlier, the combined service areas of the cooperatives include more than 2,700 miles of national forest in 12 counties. The forests generally are not contiguous and usually consist of numerous units. As a result, large lakes north of Houston and many small towns are surrounded by national forests, making it virtually impossible to provide service unless a right-of-way across national forest land is acquired. Thus, even if the cooperatives wanted to avoid the national forests, they would not be able to do so. In addition, because these areas are sparsely populated and are served primarily by the cooperatives, a disproportionate burden of paying user fees has been placed on the cooperatives.

Another consideration is the longstanding policy to allow cooperatives to cross Forest Service lands at no charge. Now, decades after some of the lines have been constructed, the Forest Service has not only withdrawn the invitation to construct future lines, but is charging for lines the construction of which may have been encouraged by the Forest Service. It is grossly unfair to terminate so abruptly such an important and longstanding policy.

In exchange for rights-of-way, over the years the Forest Service has imposed restrictions and conditions which have resulted in wider than necessary rights-of-way. For example, although public highways and roads, which make excellent distribution line rights-of-way, pass through the Angelina National Forest, the Forest Service has required the cooperatives to construct all lines 200 feet from the nearest road so they would not be visible. In addition to the higher initial construction and right-of-way maintenance costs, this policy penalized the cooperatives because more forest land was required than had the lines been constructed along a road or a highway.

These cooperatives serve the Forest Service at approximately 50 metering points. Many miles of distribution line have been constructed taking into account the Forest Service's needs. Nevertheless, the Forest Service is charging for every inch of distribution line, except for their own service entrances. To add insult to injury, the proposed annual charges exceed the total billings for electric service rendered to the Forest Service. The charges have the effect of forcing the cooperatives to pay for the right to serve the Forest Service.

As a final point, the cooperatives generally do not pay for distribution line rights-of-way. In fact, the membership rules require their members to provide all necessary rights-of-way at no cost to the cooperative. This is true for lines running along highway frontage and across fields, as well as to the meter. The Forest Service is a member and is expected to comply with the cooperative's rules. Charging the cooperative for rights-of-way violates the rules. Alternatively, if the cooperative paid the Forest Service land rent, it would be obligated to pay other members in a similar manner in order to avoid discriminating between members and violating Texas law prohibiting such discrimination. The potential result -- significantly higher costs for electricity -- is a result we all wish to avoid.

In summary, S. 894, by clarifying the intent of the Act, would resolve numerous legal and equitable problems which have been caused by the various and sometimes conflicting interpretations of the Act by the Forest Service and the Bureau of Land Management. Exempting rural electric cooperatives would be "equitable and in the public interest." We urge your support of this important amendment to FLPMA.

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OF COUNSEL
NORTHCUTT ELY, P.C.

August 18, 1982

The Honorable Malcolm Wallop
United States Senate
Washington, D.C. 20510

Re: S. 894

Dear Senator Wallop:

Pursuant to my formal request to file additional material in the record of the hearing on S. 894, and your kind consent to do so, I am filing for insertion in the record a copy of the Joint Statement of Reasons appealing the decision of the Regional Forester concerning annual fees for rights-of-way across national forests in east Texas. This Appeal has been filed with the Chief of the Forest Service.

The Joint Statement of Reasons discusses in detail the statute, legislative history, and the development of the regulations. It also examines a number of equitable considerations which warrant free use or reduced fees. We appreciated the opportunity to testify in support of S. 984 and urge you to work for its passage. We also offer our services to assist you in securing a proper interpretation of section 504(g) of the Federal Land Policy Management Act.

Respectfully,

Kirk Howard Betts

Kirk Howard Betts
for Ely, Ritts, Pietrowski & Brickfield

Attorneys for
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San Augustine, Texas
Houston County Electric Cooperative, Inc.,
Crockett, Texas
Jasper-Newton Electric Cooperative, Inc.,
Kirbyville, Texas
Mid-South Electric Cooperative Association,
Navasota, Texas
Sam Houston Electric Cooperative, Inc.,
Livingston, Texas

/dsf
Enclosure

UNITED STATES OF AMERICA
FOREST SERVICE

In Re:

Deep East Texas Electric Cooperative, Inc.)
San Augustine, Texas)
)
Houston County Electric Cooperative, Inc.)
Crockett, Texas)
)
Jasper-Newton Electric Cooperative, Inc.)
Kirbyville, Texas)
)
Mid-South Electric Cooperative Association)
Navasota, Texas)
)
Sam Houston Electric Cooperative, Inc.)
Livingston, Texas)

JOINT STATEMENT OF REASONS APPEALING LETTER NOTICES AMENDING PERMITS FOR PUBLIC LANDS AND DECISION OF REGIONAL FORESTER

Opening Statement

Deep East Texas Electric Cooperative, Inc., Houston County Electric Cooperative, Inc., Jasper-Newton Electric Cooperative, Inc., Mid-South Electric Cooperative Association, and Sam Houston Electric Cooperative, Inc. (hereinafter collectively referred to as "Cooperatives"), individually and collectively, hereby appeal the decision of the Regional Forester, John E. Alcock, which affirmed the earlier decision of Forest Supervisor William Lannan, National Forests in Texas, contained in various letters dated September 24 and 25, 1981, proposing to amend all existing use permits held by the Cooperatives, purportedly to comply with Section 504(g) of the Federal Land Management Policy Act of 1976, 43 U.S.C. § 1764(g) (Supp. IV, 1980) (hereinafter "FLPMA" or the "Act").

The Cooperatives dispute the Forest Service's construction and application of the Federal Land Policy Management Act of 1976, and seek rescission of the decisions contained in the September 24 and 25, 1981, letters. The Appeal has been taken, inter alia, to object to the decision to repeal the long-standing exemption for Cooperatives from annual user fees, and to object to the decision to charge annual fees for uses under existing unexpired permits. The Cooperatives object to the method used to determine the fair market value of rights-of-way across public lands and to the results of that methodology which inflates the value of the use. Finally, the Cooperatives object to the failure of the Forest Service, and its local and regional representatives, to consider various equitable considerations which justify or require free or reduced charges.

Facts

Each Cooperative which has joined in this Appeal is a permittee, operates and maintains distribution or transmission lines, or both, across public lands in the national forests located in east Texas, and provides electric service to rural residential, agricultural, small business, industrial, and state and federal government facilities located in and around the only four national forests in Texas. 1/ More than 2,700 square miles of land in east Texas are included within the boundaries of

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1/ The five Cooperatives serve more than 101,000 rural residential, business, state and federal government consumers in east Texas with 17,347 miles of distribution line and 257 miles of transmission line.

the Sabine, Angelina, Sam Houston, and Davy Crockett National Forests. Rights-of-way in every one of these forests are involved in this Appeal. The total amount of land involved in this dispute is 969.12 acres, which amounts to approximately five one-hundredths of one percent (.05%) of the total land located within the boundaries of these national forests.

On July 10, 1981, Harry D. Switzer sent form letters to the Cooperatives informing them that permits for the use of Forest Service land would be issued on a charge basis in the future, and that existing permits would be amended to include a charge for use. Mr. Switzer's letters did not explain the procedure for amending the permits, did not cite to specific authority for this dramatic change in policy, and did not explain how charges for use would be determined or computed.

On September 24 and 25, 1981, Harry D. Switzer, wrote to the Cooperatives and informed them that certain permits issued by the Forest Service were being "converted from free to charge" pursuant to the Federal Land Policy Management Act of 1976. The letters stated that the annual fee would be five percent of the value of the land, derived as follows:

"[No. of acres] ac. @ $[value]/ac. x .05 = $ annual fee."

The letters further advised that bills would be sent in November for the 1982 fees, that the fees would be payable by January 1, 1982, and that amendments would be issued to reflect this change.

The letters of September 24 and 25, 1981, from the Forest Service provide detailed information concerning permit dates, acreages and proposed fees which are summarized below:

Name of Cooperative-Permittee	Permit Date	Acres	Proposed Fee
Deep East Texas Electric Coop.	09/15/58	105.09	$ 3,152.70
	09/21/58	262.19	6,554.75
	09/21/58	3.85	115.50
	05/28/63	36.00	900.00
	05/28/63	12.98	389.40
	11/20/63	5.32	159.60
	08/07/52	40.89	1,022.25
	10/20/76	11.42	285.50
	10/05/79	41.20	1,030.00
Houston County Electric Coop.	02/24/58	163.33	4,083.25
	02/05/80	1.63	40.75
Jasper-Newton Electric Coop.	04/01/57	125.62	3,768.60
	05/28/63	15.41	462.30
Mid-South Electric Coop.	02/10/49	61.93	6,812.30
	03/29/63	1.87	205.70
Sam Houston Electric Coop.	08/12/58	79.20	2,772.00
	07/12/79	1.19	41.65
TOTAL		969.12 2/	$31,796.25 2/

Bills and amendments were sent to the Cooperatives in November 1981, but have not been paid for reasons explained in this Appeal.

After reviewing the proposed charges, the Cooperatives filed a Joint Notice of Appeal on October 26, 1981, with William Lannan. Pursuant to the regulations, 36 C.F.R. § 211.19(h), a Statement of Reasons was filed on November 9, 1981. The Joint Notice of Appeal was rejected by William Lannan on November 6, 1981, on the

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2/ This table has been revised to reflect changes made in the acreage calculations since the original Letters were issued.

ground that it had been filed out of time. The Cooperatives appealed this decision, asserting that actual notice of the implementation of charges had not been given until September 24 and 25. On March 2, 1982, the Regional Forester agreed and directed that the Statement of Reasons be accepted. The Cooperatives withdrew the November 9, 1981, filing, refiled the Joint Statement of Reasons on March 17, 1982, and replied to William Lannan's Responsive Statement dated April 16, 1982, on May 7, 1982. The Cooperatives presented oral comments and additional evidence concerning the question of fair market value of the use to Acting Regional Forester James Sabin on April 29, 1982, and corrected the transcript of this hearing on June 24, 1982. Regional Forester John E. Alcock rendered his decision sustaining Forest Supervisor Lannan's decision on July 9, 1982. A Joint Notice of Appeal was filed by first class mail (certified) on August 11, 1982.

The use of public lands for pathways for distribution of electricity in rural areas has been a widely accepted practice and dates back to 1938. 3/ Some of the uses date back forty years, and many have been in existence for more than twenty years. Never in the history of these Cooperatives has any one of them paid rent to a private or public landowner for the use of land for distribution or transmission lines, and never has a charge been instituted retroactively for existing rights-of-way. 4/ Members of these Cooperatives agree, as a condition for receiving service,

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3/ See Letter from R. Max Peterson, Chief, Forest Service, to United States Senator Lloyd Bentsen (Sept. 28, 1981). See also Letter from J. Block, Sec. of Agriculture, to Larry D. Backstrom (Feb. 1, 1982). Many of the permits refer to 36 C.F.R. §§ 251.2, 251.3, or Reg. U-II(1)(A) for authorization of free use.

4/ The Cooperatives have purchased easements for transmission lines across private property where the use for such lines would permanently affect the value of the land. Such lines have a long-term effect on the area beneath the line, limiting many uses and activities of the landowner. See App. A, attached hereto. (Submitted for the administrative record on April 29, 1982.)

to provide rights-of-way at no cost to the Cooperative. This principle dates back to the beginning of the Cooperatives.

Although the Forest Service has had the authority to charge users for the use of public lands, it has always issued user permits without charge to the Cooperatives, recognizing that the Cooperatives were nonprofit corporations providing a public service in sparsely populated areas of the United States. 5/ This long-standing policy has influenced line routing decisions and has encouraged the Cooperatives to use public lands rather than taking alternative routes, even where burdensome conditions have been included in the permit. Nevertheless, the density of the national forests in the combined service areas and development within the boundaries of the national forests have made taking alternative routes impossible. Moreover, rights-of-way through the forests are necessary to serve numerous federal facilities operated by the Forest Service.

Notwithstanding the extensive briefing of the issues raised in the Appeals below, the Cooperatives have yet to receive a decision from the Forest Service that does anything more than parrot the wrong legislative history. The Cooperatives have yet to receive a reasoned decision justifying the method of determining fair market value of the use, the failure to present transactional evidence supporting the formula employed, or the policy of ignoring the numerous equitable considerations which qualify the Cooperatives for reduced fees or exemption from fees. Therefore, the Cooperatives are filing this Appeal to the Chief of the Forest Service pursuant to the procedures established in 36 C.F.R. § 211.19(h).

5/ Permits issued to the Cooperatives prior to 1982 cited 36 C.F.R. § 251.2, or its predecessors, for authority to use public lands without charge. See n.3 supra. Many of the permits include a special condition stating that the right to free use will terminate upon repayment of REA loans.

Reasons for Appeal

1. Neither the statute nor the legislative history supports revocation of the exemption from payment of user fees for the use of public lands for nonprofit rural electric cooperatives.

2. It is in the public interest and equitable to exempt these Cooperatives from annual fees for existing and new uses because the Cooperatives provide a public service at cost, a significant number of miles of line are dedicated to and primarily benefit the Forest Service, the size of the Forest Service holdings in the service areas of the Cooperatives requires special consideration, and the costs of providing service to the Forest Service exceed the revenues from the Forest Service.

3. The Forest Service has exceeded its statutory authority by amending existing permits because authority to act pursuant to FLPMA is limited to "issuances, grants, and renewals." FLPMA § 501.

4. The formula used by the Forest Service to compute the annual fee violates the statute, does not yield a result which corresponds to the fair market value of the use, and does not take into account the costs associated with special terms and conditions imposed by the Forest Service. There is no finding that market data is unavailable, and there has been no transactional evidence presented to verify the results.

5. The rules, terms, and conditions under which the Forest Service takes service from the Cooperatives require the Forest Service to provide rights-of-way at no cost. FLPMA does not authorize the Forest Service to breach the rules, terms, and conditions for service.

6. This Appeal is made to the Chief of the Forest Service because the Forest Supervisor and Regional Forester have failed to address the arguments concerning Reasons 1 through 5 above, and in particular, have failed to explain why the Forest Service has failed to apply FLPMA in a manner consistent with the statute.

Argument

I. Rural Electric Cooperatives Should Be Exempt from User Fees for Rights-of-Way Across Public Lands Managed by the Forest Service.

According to the Chief of the Forest Service, rural electric cooperatives have been exempt from user fees since 1938. The reason for the exemption was to encourage the electrification of rural areas, pursuant to the Department of Agriculture's role in rural development. The Federal Land Policy Management Act does not repudiate this policy or its underlying rationale. Indeed, the statute and the legislative history support the proposition advanced by the Cooperatives that they should continue to be exempt from user fees.

The starting point in every situation involving the construction of a statute is the language itself. _Lewis v. United States_, 445 U.S. 55, 60 (1980); _Reiter v. Sonotone Corp._, 442 U.S. 330, 337 (1979). Section 504(g) of the Act states:

> "The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing or renewing such right-of-way: . . . _Provided however_, . . . Rights of way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, _to non-profit associations or non-profit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises_, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned . . . _including free use_ as the Secretary concerned finds equitable and in the public interest." FLPMA § 504(g) (emphasis added).

Section 504(g) authorizes the collection of annual fees by the Secretary for the use of rights-of-way. However, this section specifically provides several categories of entities which may be granted "free use," among those being "non-profit associations or corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises . . . ." _Id._ The language specifically provides that nonprofit corporations are eligible for free use.

A. These Cooperatives satisfy the nonprofit test established by the Act.

Each Cooperative is a nonprofit corporation under the laws of the State of Texas. None is controlled or owned by profitmaking corporations. The Texas Electric Cooperative Corporation Act -- the statute under which the Cooperatives were organized -- describes the nature of these corporations as:

> "Co-operative, non-profit, membership corporations heretofore or hereafter organized under this Act are authorized to engage in rural electrification . . . ." Tex. Rev. Stat. Ann. art. 1528(b), § 3 (Vernon 1980) (emphasis added).

Texas law, the operative law for defining whether an entity is a non-profit corporation, Erie Railroad Company v. Tompkins, 304 U.S. 64 (1938), requires rural electric cooperatives to operate as nonprofit corporations:

> "(a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times:
>
> > "(1) To pay all operating and maintenance expenses . . . and principal of and interest on the obligations . . . ;
> >
> > "(2) For the creation of reserves.
>
> . . .
>
> "(c) Revenues not required for the purposes set forth . . . shall be returned to the members . . . either in cash, in abatement of current charges for electric energy, or otherwise . . . ; [or] by way of general rate reduction to members . . . ." Tex. Rev. Stat. Ann. art. 1528b, § 25(a), (c) (Vernon 1980) (emphasis added).

As nonprofit corporations, they are specifically exempted by the State of Texas from "all . . . excise taxes of whatsoever kind or nature." Id. at § 30. It is beyond peradventure that rural electric cooperatives in Texas are "non-profit associations or non-profit corporations which are not themselves controlled by or owned by profit-making corporations or business enterprises," FLPMA § 504(g), and that they fall within the class of entities entitled to exemption from user fees.

B. Congress intended to exempt nonprofit rural cooperatives from annual user fees.

Congress gave the Secretary discretion to grant free use to certain types of entities, including electric cooperatives. The legislative history supports the position asserted by the Cooperatives that free use was authorized and endorsed. Nevertheless, the Forest Service has taken the position that free use is prohibited and that every user must pay something. This section discusses how the Forest Service has interpreted Section 504(g), how the local and regional Forest Service representatives have misread the statute and the regulations, and why the Senate language should not have been used to develop the regulations. Finally, the section includes a transcript of the recent comments of one of the drafters of FLPMA which vividly demonstrates how far the Forest Service has deviated from the intent of Congress.

1. The regulations wrongfully prohibit cooperatives from waiver of fees.

Notwithstanding the fact that the statute specifically allows the Secretary to authorize free use for nonprofit corporations, the regulations issued by the Forest Service specifically excluded rural electric cooperatives from ever being exempted from rental fees. The regulations state:

> "All or part of the fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System lands in the following circumstances:
>
> "(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal sources of revenue from the authorized use is customer charges . . . ." 36 C.F.R. § 251.57(b) (emphasis added).

These regulations have the effect of prohibiting local Forest Service officers from waiving the fee or any portion thereof for electric cooperatives. The regulation reflects a complete misunderstanding of the language and intent of the Act -- a lack of understanding which has permeated the entire administrative review process.

This misunderstanding is exemplified in the Responsive Statement of Forest Supervisor Lannan, responding to the Cooperatives' assertion that exemption from fees was authorized by the Act, in which he wrote:

> "A. It was specifically intended to not exempt REA cooperatives, or other similarly organized entities, from rental fees.
>
> "B. Reduced charges, but not waiver of rental fees, are available to non-profit entities that are essentially tax or donation supported if they are engaged in a public or semi-public activity. The cooperatives are not supported by taxes or donations." 6/

Regional Forester Alcock's decision disposes of the question in a similar manner. He stated in his decision:

> "One of the responses by the Assistant Secretary of Agriculture is explicit that cooperatives, whose principle source of revenue is customer charges, be charged fair market value fees. (44 F.R. 29114 5/18/79)." 7/

That "Response" of the Assistant Secretary has been quoted frequently. The "Response" however, actually affirms the Cooperatives' premise that the Forest Service is relying on the wrong legislative history. The Assistant Secretary's "Response" to comments stated:

> "The House Report indicates the committee considered and supported the long-time agency policy of providing special fee considerations favoring State and local governments and non-profit organizations. The Senate Report, however, states ' . . . it is not the intent of this committee to allow use of . . . land without charge except where the holder is the Federal Government itself . . . .'" 44 Fed. Reg. 29114 (1979).

6/ W. Lannan, U.S. Forest Service, Responsive Statement to the Notice of Joint Appeal filed October 26, 1981 and Statement of Reasons Submitted on March 17, 1982 by Attorney Kirk Howard Betts in Behalf of Five East Texas Rural Electric Cooperatives Seeking Relief from the Forest Service's Decision to Initiate Rental Fees for Powerline Rights-of-way Across the National Forests in Texas at 3 (April 16, 1982).

7/ J. Alcock, U.S. Forest Service, Letter Decision, at 1 (July 9, 1982).

The regulations and comments place considerable weight on the Senate Report. However, the bill which passed the Senate did not pass the House, nor were the provisions of the Senate bill addressing rights-of-way adopted by the Conference Committee which worked to resolve the differences in the Senate and House versions. It is improper, therefore, to rely on the Senate Report for developing regulations construing Section 504(g).

2. For purposes of construing Section 504(g) of the statute, the Senate bill and Report are irrelevant.

The Senate bill prohibited free use under any circumstances unless the user was the federal government, although it did provide for a "lesser charge" for non-profit corporations. Section 403(f) of the Senate Bill, S. 507, read as follows: 8/

> "(f) No right-of-way shall be granted, issued, or renewed pursuant to this title for less than the fair market value thereof as determined by the Secretary . . . . Provided further, that rights-of-way may be granted, issued, or renewed to State or local governments or agencies or instrumentalities thereof, or to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, for such less charge as the Secretary finds equitable and in the public interest." S. 507, 94th Cong., 1st Sess. § 403(f) (1975) (emphasis added).

There are substantial differences between the Senate language and the language of Section 504(g) as adopted. First, the intent of the Senate bill, as set out in the first sentence, was entirely different: It specifically required charges for every right-of-way. With regard to nonprofit entities, it provided for lesser charges, but not for free use. The Senate Report, S. Rep. No. 94-583, 94th Cong., 2d Sess. (1976), was consistent with the language of the Senate bill. Referring to Section 403(f) of the Senate bill, the Report said:

8/ Section 504(g) of FLPMA is the relevant section for comparison.

> "This subsection provides that no right-of-way shall be issued for less than 'fair market value' as determined by the Secretary. The proviso at the end of the subsection qualifies this standard where the applicant is a State or local government or a nonprofit association. In this case, the right-of-way may be granted for such lesser charge as the Secretary determines to be equitable under the circumstances. However, it is not the intent of this Committee to allow use of national resource land without charge except where the holder is the Federal Government itself or where the charge could be considered token and the cost of collection would be unduly large in relation to the return to be received." Id. 72-73 (1976) (emphasis added).

The Senate Report reiterated the Senate's goal that every user would be charged something, and clarified that the federal government was the only entity that would not be subject to a charge.

The Senate bill and Report certainly do not reflect the approach ultimately adopted by the Conferees. Therefore, the legislative history developed in the Senate is not relevant to the development of regulations.

3. The language of Section 504(g), as reported by the Conference Committee and adopted by the House and Senate, was derived from the House bill and Report, and it is to those documents that the Forest Service must look to determine the intent of Congress.

The Senate's language was rejected by the Conference Committee. The Conference Committee adopted significant parts of the House bill, H.R. 13777, which provided for free use for non-profit corporations (e.g., cooperatives) in the same manner as federal, state, and local governments or agencies or instrumentalities thereof. To accomplish the goals of the House bill, the Conferees deleted the phrase "for such less charge" and substituted the phrase "including free use" in its place. The source of this phrase was H.R. 13777. In the section-by-section explanation of the provisions of the bill, the House Committee specifically endorsed the exemption policy with the following explanation:

> "In considering this Title, the Committee took notice of the longtime policies of the Department of the Interior favoring State and local governments and non-profit organizations by special price and liability considerations under appropriate circumstances. It also reviewed the policy requiring holders of transmission line rights-of-way to make excess capacity available for wheeling of power from other systems . . . . The Committee rejected suggestions to modify these policies. The action by the Committee is to be considered a specific endorsement and support of these policies." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 19 (1976) (emphasis added).

It is the Conference Report, H.R. Conf. Rep. No. 94-1724, 94th Cong. 2d Sess. (1976), the House bill, H.R. 13777, and the House Report that provide the relevant portions of the legislative history for the purpose of construing the statute and developing regulations. Failure to give the proper weight to the House Report has resulted in an incorrect interpretation of the statute.

It is entirely proper to delve into the legislative history where there is an ambiguity in a statute or in the construction of any Act of Congress. Under the circumstances, it is necessary to rely on the House language for the intent. As one court, faced with a similar circumstance, has said, "That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determining what was Congress' intention with respect to the matters in issue." Pan American World Airways, Inc. v. CAB, 380 F.2d 770, 781 (2d Cir. 1967). See also Davidson v. Gardner, 370 F.2d 803, 828 (6th Cir. 1966). Indeed, it is entirely inappropriate to rely on the Senate bill or Report language because to do so would require a reviewing body to decide "that Congress intended a result that it expressly declined to enact." Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 200 (1974).

4. The Cooperatives' construction of the statute has been confirmed by one of its authors.

On August 6, 1982, the Subcommittee on Public Lands and Reserved Water of the Senate Energy and Natural Resources Committee convened a hearing on legislation drafted to clarify the intent of Section 504(g). S. 894, 97th Cong. 1st Sess. (1981). Of particular interest were comments by Senator John Melcher, who was intimately involved with the drafting of FLPMA and negotiations in the House Conference Committee in 1976. Senator Melcher himself testified to the intent of the legislation during questioning of a witness from the Bureau of Land Management, and we have included relevant portions of the transcript of that hearing here:

> "SENATOR MELCHER: We drafted this particular section of the bill, I guess we thought we knew where we were at on it, to allow some discretion. But I am told that there is no discretion allowed, that what you have got is the policy of no rural electric or no rural telephone cooperative to be given easement without cost. Is that correct?
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> * * *
>
> "MR. ENGDAHL: That is correct.
>
> "SENATOR MELCHER: They never found any instance where the Secretary determined that if it was a nonprofit cooperative or association and therefore should not be charged?
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> "MR. CABOT: Since the passage of the regulation in 1980, we have been charging REAs, yes, sir.
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> "SENATOR MELCHER: I regretted that we were not more explicit in that bill. The intent was not arrived at off the top of our heads.
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> * * *
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> "SENATOR MELCHER: I want to assure you . . . that in drafting the language in this particular section there were none of us on the subcommittee, the one that we were intimately involved with, that ever thought that any charges would be made for rights-of-way under any of the conditions that you have mentioned, we thought the language was clear.
>
> ". . . We had in fact assurances [from the Secretaries] that everything you have described would be cared for in this language in 504(g) of FLPMA . . . no charges under all of the circumstances that have been described here today.

> "And I too wish the people from the administration had stuck around, . . . they knew full well what was the intent and knew full well why we gave this to them to allow these Secretaries to have some discretion.
>
> "If there is anything we do too much around here that is to allow the Secretary of the Interior and the Secretary of Agriculture to have too much discretion, because you constantly find out that it is their regulation and their interpretation of the language that it is adopted . . . that is going to govern.
>
> ". . . We should be more specific in our language and we should have said, as this bill says, you are not going to charge for easements for rights-of-way for rural telephone cooperatives . . . .
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> * * *
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> "It is about time we made this little correction. I did not think we would ever have an argument over it. I thought it was explicit enough, not that they were thinking exactly the same way we were, but we trusted them. I think we were wrong and we should not have trusted them. I think we should make it clear now exactly what we mean and put it into law and be done with it."

5. Congressional intent to preserve the exemption may be inferred.

The congressional intent to excuse rural cooperatives from user fees can be inferred by the consideration Congress has always given to the special needs of rural cooperatives. [9] For example, the Reclamation Project Act of 1939 provides that, in the sale of electric power or in the lease of power privileges in connection with Bureau of Reclamation projects, "preference shall be given to municipalities and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936." 43 U.S.C. § 485h(c); see also Flood Control

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[9] Many laws have a statutory preference clause which requires capacity and energy to be sold first to public bodies and cooperatives. Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831i (1976), Bonneville Project Act of 1937, 16 U.S.C. § 832c(a) (1976), Reclamation Project Act of 1939, 43 U.S.C. § 485h(c) (1976). See also City of Anaheim, California v. Kleppe, 590 F.2d 285, 286-287 (9th Cir. 1978), Arizona Power Authority v. Morton, 549 F.2d 1231, 1237 (9th Cir. 1977). The purpose of this clause was to prevent the monopolization of power by private utilities, by requiring that the power be offered to those more "public" entities that would provide the customer with low-cost electric energy. 41 Opp. Atty. Gen. 236, 248 (1955). See American Public Power Association, The Right to Federally Generated Power, An Analysis of the Preference Clause (1979); Fereday, The Meaning of the Preference Clause in Hydroelectric Power Allocation under the Federal Reclamation Statutes, 9 Envt'l L. 601 (1979).

Act of 1944, 16 U.S.C. § 825s. Under the Mineral Lands Leasing Act, cooperatives are again treated as privileged bodies, as the following provision indicates:

> "A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities." 30 U.S.C. § 201.

Rural electric cooperatives have been given tax privileges unavailable to investor-owned public utilities. *See* 26 U.S.C. § 457(D)(9). There is no indication that Congress had rescinded its recognition of the unique circumstances of rural cooperatives when it enacted FLPMA. Indeed, the legislative history reveals quite the opposite is true.

Congressional intent can be inferred from the way in which Congress categorized possible free users and defined rights-of-way. FLPMA §§ 103(f), 501(a). Of all the holders of right-of-way permits across Forest Service lands, the only entities that could possibly be qualified for, interested in, or requiring a right-of-way, as defined by FLPMA, are rural cooperatives.

The Forest Service misinterpreted the congressional intent when it promulgated its regulations excluding rural cooperatives from free use. While deference is the norm for administrative interpretations of statutes, deference does not apply where an agency has misinterpreted its statutory mandate. *Association of American Railroads v. Costle*, 562 F.2d 1310, 1318-19 (D.C. Cir. 1977). Once a court determines that the construction of a statute is in conflict with the plain intent of Congress, that court has a duty to ignore the agency's construction of the statute. *Wilderness Society v. Morton*, 479 F.2d 842, 864-66 (D.C. Cir. 1973). The Forest Service has ignored the obvious congressional intent to include Cooperatives within the category of "nonprofit associations or nonprofit corporations" for purposes of free use consideration. Such agency action is in conflict with its statutory authority, is invalid, and must be reversed.

II. It is Equitable and in the Public Interest to Exempt Rural Electric Cooperatives from User Fees.

The first applicable standard for exemption, the nonprofit corporation standard, was addressed above. Although it is abundantly clear that Congress intended to exempt the Cooperatives from annual fees, the discretion to exempt nonprofit corporations was qualified by a second standard, that being whether such exemption would be "equitable and in the public interest." FLPMA § 504(g). It is equitable and in the public interest to uniformly exempt nonprofit rural electric cooperatives from such charges. It is arbitrary and capricious to categorically exclude cooperatives from even applying for exemption, especially in this case, where there are extraordinary circumstances which warrant waiver or reduction of such charges.

A. The "direct competition" and "customer charges" standards are inappropriate standards for distinguishing between nonprofit entities, and are irrelevant for purposes of determining whether the Cooperatives should be eligible for free or reduced fees.

In the course of developing the regulations, the Forest Service attempted to draw a distinction between types of nonprofit corporations. In a response to comments concerning the proposed regulations, the Forest Service said:

> "As a matter of equity we believe it is inappropriate to either reduce fees or grant free use when the holder follows practices equivalent to private commercial enterprise. For this reason cooperatives and municipal utiities whose principal source of revenue is customer charges will, hereafter, be charged fair market value fees." 44 Fed. Reg. 29114 (1979).

Other means of distinguishing between nonprofit corporations include a "tax or donation supported" standard and a "general public benefits from the use" standard. Id.

This overall approach was highlighted a year later in comments accompanying the proposed regulations. The Forest Service cited an unidentified commentator who said, "nonprofitability should not preclude the charging of the rental fee because a non-profit organization could be in direct competition for services provided by a profitmaking enterprise." 45 Fed. Reg. 36326 (1980). There are no findings of fact in the comments or the regulations which support a finding that rural electric cooperatives "follow practices equivalent to private commercial enterprise," are in "direct competition for services provided by a profit-making enterprise," or do not provide benefits to the general public.

The Forest Service apparently believes that there is direct competition between the Cooperatives and investor-owned utilities. It is mistaken. The Cooperatives are wholesale purchasers of power, directly and indirectly, from Texas Power & Light Company, Southwestern Electric Power Company, and Gulf States Utilities Company. The Cooperatives take the power at various delivery points and distribute it only within areas certificated by the Texas Public Utility Commission. Texas Public Utility Regulatory Act §§ 49-62 (1975). By law, the Cooperatives may serve only rural areas; they may not compete against a municipal power system for service within the municipality's service area, and they may not compete for service connections in incorporated or semi-incorporated cities or towns which had central station service at the time the cooperative was formed. Tex. Rev. Stat. Ann. art. 1528b, § 3. These severe restraints on competition between cooperatives and investor-owned utilities -- restraints which are statutorily imposed -- prevent the Cooperatives from obtaining the more lucrative high-density market and being able to compete. For example, it is the rural electric cooperative that still must provide service to residential and agricultural consumers who may be thousands of feet from existing distribution lines, to seasonal customers in remote areas, or to remotely located Forest Service facilities. The competitive limitations of having to provide service in rural areas are made even clearer by the fact that the five Cooperatives average 5.5 meters per mile of distribution line, while the investor-owned utilities that sell wholesale power to the Cooperatives average 42 and 50 meters per mile of line.

Because of statutory restrictions, defined certificated areas which are almost exclusively rural, and the low density of those areas, the issue of competition is irrelevant. It is the wrong standard for determining whether free use for cooperatives is equitable and in the public interest.

B. The question of whether free use is equitable and in the public interest must be answered affirmatively under these circumstances.

The Forest Service ignored numerous equitable considerations when it prohibited electric cooperatives from obtaining exemptions from user fees.

1. Extensive federal lands.

When determining whether a non-profit user is entitled to free use, the Forest Service should take into account the concentration of national forest lands in the service areas of the Cooperatives. There are more than 2,700 square miles of land within the boundaries of national forests in the 12 counties served by the Cooperatives. Because these are certificated areas, the Cooperatives must provide service to Forest Service facilities, private facilities, and even to small towns that are located within the Forest Service boundaries. Many miles of line have been constructed to benefit the Forest Service and private consumers in and around the national forests. Many miles of line are located along highways and roads, and underground, causing minimum disturbance to the forests, but nevertheless are subject to charge. In any case, the high concentration of national forests in the Cooperatives' service areas makes it virtually impossible to avoid Forest Service land. [10/] The policy to charge has a far greater impact on the Cooperatives in east Texas than on other cooperatives in Texas. The Cooperatives should not be penalized by the presence or density of national forests in their service areas.

2. Service to Forest Service facilities.

A second factor which makes charging user fees to the Cooperatives inequitable is that the miles of line which cross national forests benefit government facilities through 53 metering points for the Forest Service. It is outrageous to charge a user fee for lines which were installed and are maintained for the benefit of the government and the general public. To add insult to injury, the proposed annual charges exceed the total billings by the Cooperatives for electric service rendered to the Forest Service. For example, in 1981, Deep East Texas Electric Cooperative billed the Forest Service $13,112.20, and the proposed annual land rent would be $13,609.70. The proposed charges have the effect of forcing the Cooperatives to pay for the right to serve the Forest Service, and because the costs to serve will be higher than the revenues, the Forest Service would receive electric service at no cost.

3. Systems built in reliance on a consistent federal policy.

A third equitable factor weighing in favor of granting an exemption is the federal government's long-standing policy of exempting the Cooperatives from user

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[10/] A large-scale map (1:500,000) showing the service areas and the national forests was introduced into the administrative record on April 29, 1982.

fees. The Cooperatives have designed systems and constructed hundreds of miles of lines in reliance on the policy exempting them from user fees. It is grossly unfair to abruptly terminate such an important and longstanding policy.

4. Local forest rules result in higher charges.

Local rules for the forests have created some of the problems FLPMA was intended to prevent. For example, some forests have required lines to be buried underground or to be placed as much as 200 feet outside of existing easements for roads and highways. The use of a common easement, such as a road, would have minimized the contact with the forest and been more in concert with the FLPMA policy requiring corridors for joint use wherever possible. Nevertheless, even where a cooperative would have preferred the least disruptive route, the local rules have forced the establishment of the off-road easement and the greater destruction. It is especially egregious to revoke free use when the greater impact has been caused by the Forest Service itself.

5. The valuation may cause higher rates for all consumers.

A fifth factor is the effect the government's action could have on the greater number of miles of line located on private lands. As the Cooperatives will discuss in more detail *infra* in Arguments IV and V, they have never paid rent or purchased easements for distribution lines. The Forest Service's actions may set a standard rate for such lines, a result which would be inequitable to rural consumers and contrary to the public interest. Rental fees are an annual expense which is allocated to the cost of service. If the charge is allocated among all consumers, and others insist on annual rents rather than granting easements, the costs could be substantial.

6. The permits include restrictions concerning accounting treatment for ratemaking purposes.

A sixth equitable consideration is that several of the permits contain a standard condition which prohibits the permittee from recovering the value of the use for ratemaking purposes. Although the condition may be reasonable when there are no charges, it is unreasonable if charges are imposed.

7. The use of public lands creates obligations and duties which are not present in grants from private landowners.

In addition to numerous conditions concerning maintenance and clearing procedures, reporting obligations, environmental and archaeological reports, and local rules (discussed supra at 3), if a cooperative has unused transmission capacity, it must be made available to the federal government. This is just one of the many duties imposed by the permits. See infra at pp. 33-34.

8. These five Cooperatives account for 27 percent of the total fees expected to be collected from users.

These five Cooperatives are being asked to pay a disproportionate share of the total revenues expected from this change in policy. Secretary Block has written to Members of Congress and to at least one cooperative and informed them that the total revenue nationally from rental fees would be $120,000. The five Cooperatives involved in this Appeal account for only two percent of the cooperatives in the United States holding permits, and yet they are expected to pay 27 percent of the total fees. Deep East Texas Electric Cooperative is expected to pay 11 percent of the national total. Secretary Block has also written that, "[l]ess than 20 would pay over $1,000," but all five Cooperatives involved in this Appeal must pay over $1,000. It is inequitable to place such a burden on this small group.

The theories advanced in the comments published in the Federal Register in 1979 and 1980 as grounds for excluding cooperatives from waiver or reduction in fees are contrary to the legislative intent and erroneously preclude the Forest Service personnel from considering equitable factors. None of the published comments discussed the type of circumstances presented here. These are compelling circumstances which warrant a finding that free use is equitable and in the public interest.

III. The Forest Service May Not Amend Existing Permits for Rights-of-Way to Include User Fees

The Forest Service has exceeded its statutory authority under FLPMA by amending existing permits for rights-of-way. The letters notifying the Cooperatives of the conversion from free use to charge state that the intent of the action, and the authority for the action, are derived from the Federal Land Policy Management Act of 1976. The statute does not authorize nor require this action.

FLPMA protects existing holders of rights-of-way from abrupt changes in the permits and rights granted thereunder. Specifically, FLPMA states:

> "Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title." FLPMA § 509(a) (emphasis added).

And, with regard to existing rights, it states:

> "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act." FLPMA § 701(a).

These sections were intended to grandfather existing rights-of-way so as not to allow changes in the terms and conditions of the permits until they expire. The Committee Reports interpret these sections as insurance against abrupt termination or changes. As the Senate Report succinctly put it, "This section provides the necessary assurance that valid existing rights will not be sacrificed by any action the Secretary might take . . . ." S. Rep. No. 94-583, at 77. See also id. at 75; H.R. Rep. No. 94-1163, at 23. [11]

The decision to amend existing permits constitutes a significant change in the rights granted under those permits. Each permit, in fact, states on its face that the use is free. [12] It should not be forgotten that the Forest Service traditionally has not charged the Cooperatives for use of public lands and this privilege was not implicitly or explicitly revoked by the enactment of FLPMA. Indeed, it is apparent from the legislative history that the longstanding administrative interpretation allowing for use without charge was endorsed, particularly in light of the change in wording and intent discussed supra at pp. 11-17.

The statute, furthermore, explicitly protects existing permit holders from amendment of permits to include charges by limiting when the Forest Service may take such actions. The Act provides:

> "(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way. . . ." FLPMA § 504(g) (emphasis added).

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[11] The House language is especially important in light of the Committee's express intent to preserve the policy providing for free use. H.R. Rep. No. 94-1163 at 19.

[12] Many of the permits contain a statement to the effect that free use was granted based on 36 C.F.R. § 251.1 or § 251.2 or prior regulations. Our review does not reveal an express statement allowing free use for cooperatives. The language is not unlike the present public interest standard in FLPMA. We note also that a provision frequently has been included that provides for charges in the future if the cooperative repays the existing REA loans or ceases to be a rural electric cooperative.

As a result of this language, the holder of a right-of-way who is not exempt from user fees may be assessed only when the right-of-way is "issued, granted, or renewed."

Many of the permits will not expire for several years, but the Forest Service is amending all existing rights-of-way. The statute does not authorize unilateral amendments of existing rights-of-way for the purpose of converting a permit to the terms and conditions required by FLPMA. To the contrary, sections 501, 504, 510, and 701 of the Act specifically limit the application of FLPMA to prospective grants, issuances, and renewals. Therefore, if the Forest Service intends to charge for rights-of-way used by the Cooperatives, it may do so only for new rights-of-way or existing rights-of-way which are subject to renewal. None of the right-of-way permits which are the subject of this appeal expired on January 1, 1981. 13/ Therefore, the Forest Service must await the expiration date of a permit before it may institute user charges. The Forest Service has exceeded its statutory authority by attempting to amend unexpired permits.

The Bureau of Land Management (BLM) (the other agency charged with administration of federal lands under FLPMA) has not adopted the Forest Service's approach. BLM has interpreted FLPMA as having prospective effect only and applies its rules to rights-of-way "issued pursuant to title V of [FLPMA]." 43 C.F.R. § 2800.0-5. BLM's Appeals Board has determined, based on these regulations, that pre-FLPMA rights-of-way are not governed by the regulations. James W. Smith (On Reconsideration), 55 IBLA 390, 396 (1981). The Board held that FLPMA was to have only prospective effect, and that all rights-of-way issued prior to FLPMA would be

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13/ The expiration/renewal dates for permits held by Deep East Texas Electric Cooperative range from August 7, 1982, to December 31, 2010.

governed by the appropriate pre-FLPMA regulations. American Telephone & Telegraph Co., 61 IBLA 343, 346 (1982). Regulations promulgated pursuant to FLPMA would apply to pre-FLPMA rights-of-way only if they conformed to FLPMA; that is, only if the holder has consented to a cancellation of his right-of-way and has been granted a right-of-way pursuant to FLPMA. Mountain States Telephone & Telegraph Co., 64 IBLA 164, 166 (1982) (citing for authority FLPMA § 509(a)). The application of FLPMA prospectively, recognized by the BLM and contained in the very language of FLPMA, is the only correct interpretation of FLPMA.

The Regional Forester attempts to find support for the actions of Forest Supervisor Lannan in the regulations, and cites to 36 C.F.R. § 251.57(f) in the regulations to support this proposition. The regulation relied upon states that "rental fees may be initiated or adjusted whenever necessary." However, the regulations limit the right to readjust to two circumstances: (1) when there is a fee review or reappraisal, and (2) if the holder's qualifications change (i.e., from nonprofit to profitmaking). Id. Neither circumstance is present here to trigger a change in rental value.

The Regional Forester also argues that the language in the existing permits provides for initiation of fees at any time. Each permit held by the Cooperatives authorizes free use. Some permits include a special term which states:

> "If at any time during the effective period of this permit the permittee ceases to be an REA sponsored cooperative, or pays its REA loan in full, a fee commensurate with the value of the use will be charged in accordance with 36 C.F.R. 251.3."

The standard term on the first page of the permit reserving the right to charge at some future time must be read in conjunction with the special terms of the permit or in conjunction with the provision in the Code of Federal Regulations authorizing free use so long as REA loans are outstanding and not in default. It cannot be read as authority to unilaterally amend a permit. Such action is authorized only if the conditions of the permit were breached, or if the loans are repaid or considered in default.

IV. The Forest Service Improperly Calculated the Fair Market Value of the Use and Arbitrarily Ignored Available Market Data.

The methodology employed by the Forest Service to determine the annual fee does not compute the "fair market value of the use," results in gross overcharges to the users, and violates the intent of the Act. The Federal Land Policy Management Act of 1976 declared the policy that charges be based on the "fair market value of the use." Section 102(a)(9). With regard to rights-of-way, the policy requires holders of permits who are not exempt from annual fees to "pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way . . . ." FLPMA § 504(g) (emphasis added). The implementing regulations authorize the local Forest Service officer to determine "the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." 36 C.F.R. § 251.57. The "fair market value of the rights and privileges authorized," does not deviate substantially from the practice prior to the enactment of FLPMA to charge user fees "commensurate with the value of the use authorized by the permit." 36 C.F.R. § 251.3(a) (repealed).

The local Forest Service officer, Harry D. Switzer, notified the Cooperatives on September 24 and 25, 1981, that the "fair market value of the use" of Forest Service lands was to be based on five percent of the fair market value of the land.

To determine the fair market value of the use, the Forest Service has assigned acreage values for forest lands ranging from $500 to $2,200 per acre. However, the assigned values of the forest lands have been influenced by factors like proximity to water, suggesting that values are related to highest and best use. 14/)

The Regional Forester argued in his decision that the percentage factor is appropriate and even conservative "as compared with the percentages applied by the private market." He stated that there was an "absence of market evidence or rental data" and never explained the absence of "transactional evidence" which was used as the basis for the charge. The guiding principle is that FLPMA specifically provides that "the United States receive fair market value of the use of the public lands." The Forest Service relied upon a 1964 Bureau of the Budget Study in its comments on the proposed rulemaking, which said:

> "Charges are to be determined by the application of sound business management principles and so far as practicable and feasible in accordance with comparable commercial practices.
>
> " . . . Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands." Bureau of the Budget, Natural Resources User Charges Study, cited in 44 Fed. Reg. 29113 (1979).

These principles are echoed in the various operating documents of the Forest Service, e.g., The National Forest Manual, Regulations and Instructions (1926); The Use Book, Regulations and Instructions for the Use of the National Forest Reserves (1929) ("The charge for lands used for commercial purposes should be based on what the private lands in the same locality would rent for if put to the same use." Id.).

14/ In a letter dated September 25, 1981, Harry D. Switzer informed C.B. Richards of Deep East Texas Electric Cooperative that "some lines are in high value waterfront zones. At this time we do not have precise acres in this high value zone . . . . When this is available, we will adjust your fees accordingly."

"Fair market value" is not defined in the statute or in the legislative history. When a term is used in a statute but not defined by the statute, the courts will look to the common usage of the terms to discern statutory intent. National Labor Relations Board v. Highland Park Manufacturing Co., 341 U.S. 322, 327 (1951) (Frankfurter, J., dissenting); Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 617-18 (1944); Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48 (1928); United States v. Midwest Oil Co., 236 U.S. 459, 473 (1915). Thus, the Forest Service is compelled to look at the definition which is most widely accepted. We may also look to the policy of the agency at the time of passage and prior administrative practice or decisions to discern an intent. Saxbe v. Bustos, 419 U.S. 65, 74 (1974); National Labor Relations Board v. Highland Park Manufacturing Co., 341 U.S. 322, 327-28 (1951) (Douglas, J., dissenting); Norwegian Nitrogen Products Co. v. U.S., 288 U.S. 294, 315 (1933).

A. Commercial practices have been ignored.

The methodolgy used by the Forest Service to determine the annual fee completely ignores commercial practices in the area. The formula has no correlation to the fair market value of the use of the land as distribution or transmission line rights-of-way. 15/

The Cooperatives have never paid land rent for the use of private lands for distribution or transmission lines. Private property owners have not demanded land rent, nor have they required the Cooperatives to purchase easements, because the

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15/ The Cooperatives introduced a summary of right-of-way purchases at the oral hearing on April 29, 1982. This table is attached as Appendix A.

effect of distribution lines on the land is so minor as to not require compensation and because the electrification of rural areas provides substantial public benefits. The decision of private landowners not to charge should be taken into consideration by the Forest Service, particularly in light of its duty to take into account commercial practices in the area. We emphasize this fact because the open market has decided that there is no value gained or lost as a result of a right-of-way for a distribution line. 16/

The Chief of the Forest Service should order a survey of the area immediately to determine the fair market value of the use. The Forest Service Manual and Secretary of Agriculture John Block agree that the fair market value of the use is best derived from market data. See Forest Service Manual § 2715.12 (1974); and Letter from J. Block to L. Backstrom (Feb. 1, 1982). The methodology employed by the Forest Service to determine the fair market value of the use is arbitrary and capricious; it established an artificial price for the use of public lands, and set a price which is higher than private landowners have ever set.

B. A percentage of land values is irrelevant when determining the fair market value of the use.

Perhaps recognizing that private landowners do not charge rent, the Forest Service chose an alternative valuation methodology for setting fees based on a percentage of land values. See Forest Service Manual § 2715.11 (1974). The procedure under this section requires the Forest Service to determine the fair market

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16/ In cases where it has been necessary to purchase rights-of-way for transmission lines, the Cooperatives have paid between $400 and $600 per acre for permanent and perpetual rights-of-way. See App. A.

value of forest land of similar size, recently exchanged, and maintained as forest lands. (The survey of transactions should exclude forest land exchanged for residential or commercial development.) This section also sets the minimum percentage rate at five percent, "unless clearly supported by market rental data." Id.

Under the Forest Service's own guidelines, it is unacceptable to use an average acreage value based on various acreage values within a tract (for example, taking into account differences in land values due to proximity to a lake or a road). It must be based solely on the value of the land as forest. Once the value of forest land has been determined, then a factor which would yield a fair rental or use value for a right-of-way across the forest must be determined. Because there is no nationwide "fair market value" for such a use, we would expect that each valuation and assessment would be different.

Mr. Switzer has determined that the fair market values of forest lands range from $500 an acre to $2,200 an acre. The Forest Service has not presented any transactional evidence or support to verify that similar sized tracts retained as forest have been exchanged at these values but has advised the Cooperatives that it is available in various county courthouses. See Decision of Regional Forester, at 2. Moreover, the acreage values appear to be average values of acreage within a forest, taking into account alternative potential uses which result in higher valuation per acre. 17/

The percentage factor has not been shown to be in the range of comparable valuations. The five percent factor results in an unreasonably high annual land rent when it is compared to existing commercial practice. It is the wrong factor to use

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17/ Letter from Harry D. Switzer to C.B. Richards, supra, n. 14.

because the result is considerably higher than the Cooperatives have paid for easements conferring permanent and perpetual rights. An annual payment of the fair market value of the use, omitting equitable considerations which would require reduction or waiver, should be comparable to the value paid for an easement amortized over 99 years. The Forest Service recognizes that there are serious problems in trying to set the value of the use of federal lands on similar uses of private lands. See e.g., Cong. Rec. S. 16750-51 (daily ed. Sept. 30, 1978) (statement of Sen. Paul Laxalt).

In his letter to the manager of the Arrowhead Electric Cooperative, Secretary Block recommended a minimum fee of $2/acre. The lowest fee involved in this Appeal is $25/acre, and it goes as high as $110/acre. The Secretary stated a higher fee would be justified, "if it can be shown that the 'going rate' is higher; that is local landowners are charging more for similar use of their lands." Secretary Block's statements support the position of the Cooperatives that if a fee higher than the minimum of $2/acre is charged, it must be shown by the Forest Service to be just and reasonable. The Forest Service has refused to do this, and, apparently, is unable to do this. Without a market analysis, the minimum fee, if any, is the only reasonable fee.

Furthermore, the five percent formula does not take into account the additional terms and conditions which are imposed upon a user of public lands, but are not present in a private purchase, and which result in additional costs to the permittee. We are here referring to indemnification provisions, rights of termination and revocation reserved to the Forest Service, prohibitions on transfer, strict liability for damages, preparation of resource management plans, archaeological and historical surveys, timber payments, various reporting requirements concerning pesticide uses, rights reserved to the Forest Service to require relocation, duty to salvage excavate historical sites of lesser value, and, in the case of transmission lines, the requirement to provide surplus capacity and data and information on line capacity to the Secretary of Energy. Because all of these require additional expense and paperwork, and reflect the limited control and interest held by the permittee, an appropriate adjustment to achieve a true fair market value of the use is necessary. Consideration should also be given to benefits derived by the Forest Service and the public from these special terms and conditions as well as any benefits which result from such rights-of-way, _e.g._, trails, access roads, fire breaks, etc. The Regional Forester reports this percentage has not changed over the years, is conservative, and takes into account special burdens imposed by the permits. Decision of Regional Forester at 2. That is little consolation in light of actual market data for permanent and perpetual easements.

Therefore, if any fair market value of the use is to be assessed, it should not be based on false assumptions and an arbitrary formula. The proposed formula and resulting charges bear no relation to the value of the use or comparable charges for uses on non-federal land. Consequently, it should be rejected.

V. The Forest Service Is Prohibited from Charging an Annual Rent for Use of Rights-of-Way Under the Terms and Conditions of Service Under Which it Receives Electric Service from the Cooperatives.

The absence of a fair market value for distribution line easements may be explained by examining the rules, terms, and conditions for service of the Cooperatives. Each Cooperative, long ago, established a policy, which has evolved into a rule, term, and condition of service, that new or existing customers must arrange for and provide all rights-of-way at no cost to the Cooperative. For example:

> "The Applicant shall grant and furnish the Cooperative a valid right-of-way easement, without cost to the Cooperative . . . ." Deep East Texas Electric Cooperative, Inc., Service Rule 64.04.03(7).
>
> "Where line extensions are necessary to render service, Member agrees to furnish an adequate right-of-way without cost to the Cooperative over land owned or controlled by Member . . . ." Jasper-Newton Electric Cooperative, Inc., General Terms and Conditions of Service, para. 15.
>
> "Applicant/Member shall grant or secure to the Cooperative at Member's expense an easement and covenant of access . . . ." Mid-South Electric Cooperative Association, Sec. III, Sheet 10:D.
>
> "Customer agrees to grant or to secure for Cooperative, at Member's expense, any rights-of-way on property owned or controlled by Member . . . ." Id., Sec. IV, Sheet 2(4), 3(7).
>
> "The consumer will provide the necessary easements on his premises required by the Cooperative to deliver service, and shall assist in acquiring easements from adjacent owner without charge to the Cooperative. Sam Houston Electric Cooperative, Inc., Rules and Regulations 5.9.

The rules were promulgated to assure that all members would share the burden of cooperative membership as well as the benefits. The burden was an easement for a line; the benefit was electricity at the lowest possible cost. Members agree that the rules are necessary to assure that electrification of rural areas is accomplished at the lowest possible cost. Charging for rights-of-way simply will result in higher costs overall. 18/

18/ It should be noted that Temple-Eastex Forests, a private forest, does not charge for easements across its lands, even when it is not a direct beneficiary of the easement.

The rules apply to all customers and members who may have lines on their land, including the Forest Service. The rules are just and reasonable, and have been approved by the Public Utility Commission of Texas.

The rules prohibit the Forest Service from charging for the use of forest lands for rights-of-way as long as it receives service from the Cooperatives Similarly, the rules and Texas law prohibit the Cooperatives from paying such charges because to do so would constitute discrimination between customers.

The Forest Service is not excused from complying with the rules, terms, and conditions of service of each Cooperative from which it accepts service. The Cooperatives expect all customers to comply with these long-standing policies and rules.

Conclusion

The Cooperatives provide valuable and low-cost electric service to numerous residential, business, and governmental consumers in rural areas of east Texas, in and around four national forests. They are entitled to exemption from the proposed annual fees for existing and new lines because they are nonprofit corporations, because of extraordinary equitable considerations, and because the rules for service require all customers to provide rights-of-way at no cost in order to receive service.

Relief Requested

The Cooperatives jointly request that the Chief of the Forest Service undertake the following:

(1) Stay the decision requiring the collection of annual fees for the use of public lands which are the subject of this Appeal;

(2) Recall each and every letter sent to the Cooperatives on September 24 and 25, 1981, and in November 1981, requiring the payment of an annual fee for the use of all public lands for distribution and transmission lines, and rescind its decision to institute such charges;

(3) Determine that the Cooperatives are nonprofit corporations and associations entitled to be exempted from user fees under the statutory standards contained in FLPMA;

(4) Withdraw all amendments to existing permits, including the charge for use of lands;

(5) Rescind the formula currently used to derive the user fee and develop a more accurate and reasonable formula for determining the fair market value of the use;

(6) Comply with each Cooperative's rules, terms, and conditions of service requiring customers to provide rights-of-way at no cost to the Cooperative;

(7) Grant the Cooperatives an opportunity to present their position orally.

Wherefore, the Cooperatives respectfully request that this Joint Statement of Reasons be docketed, that the Chief of the Forest Service commence the process for reviewing the decisions made concerning the Cooperatives, and that the relief requested be granted.

Respectfully submitted,

Kirk Howard Betts

Kirk Howard Betts

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Deep East Texas Electric Cooperative, Inc., San Augustine, Texas
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Jasper-Newton Electric Cooperative, Inc., Kirbyville, Texas
Mid-South Electric Cooperative Association, Navasota, Texas
Sam Houston Electric Cooperative, Inc., Livingston, Texas

August 18, 1982

APPENDIX A

SURVEY OF EASEMENTS 1/ ACQUIRED IN 1981-82 BY THREE COOPERATIVES 2/ IN EAST TEXAS

	Area	$/acre	Total	Type	Timber 3/
2/23/81	2.180	$400	$ 872.00	T	550.00
2/18/81	.342	400.	136.80	T	40.00
2/23/81	2.233	400.	893.20	T	400.00
3/27/81	1.205	400.	482.00	T	120.00
2/20/81	5.582	400.	2,232.80	T	250.00
3/17/81	.035	400.	14.00	T	50.00
11/3/81	5.61	400.	2,244.00	T	506.00
2/13/81	3.204	400.	1,281.60	T	-
2/12/81	3.011	400.	1,204.40	T	250.00
2/20/81	1.376	400.	550.40	T	80.00
3/9/81	.105	400.	42.00	T	100.00
4/8/81	1.620	400.	648.00	T	800.00
1/5/82	24.98	400.	9,992.80	T	16,008.00
12/15/81	-	-	-	T	76.07
2/13/81	2.591	400.	1,036.40	T	-
3/18/81	5.177	400.	2,070.80	T	714.60
2/12/81	3.011	-	10.00	T	-
1/18/81	1.05	-	-	D	-
11/30/81	.13	-	-	D	-
10/19/81	.46	-	-	D	-
7/30/81	.18	-	-	D	-
4/28/81	.09	-	-	D	-
3/26/81	Temple-Eastex Forests Lands R.O.W. for club granted; no charge.				
4/2/81	Temple-Eastex Forests Lands R.O.W. for club granted; no charge.				
3/17/81	.37	-	-	D	-
3/17/81	.32	-	-	D	-
1/7/81	.88	-	10.00	D	- (system improvement
1/7/81	.63	-	10.00	D	- (system improvement
1/3/81	.32	-	-	D	-
Jan. 1982 - present	89.75	600.	53,850.00	T	-
4/12/82	5.61	0	0	D (St. Regis.)	2,483.93 4/

1/ Right of way easements for distribution and transmission lines are perpetual and permanent.

2/ Specific information was provided by Deep East Texas E.C., Houston County E.C., and Jasper-Newton E.C.

3/ The cooperatives pay damages to the landowners for the value of timber lost, but retain the right to salvage, when an easement is required for a transmission line.

4/ The members for whose benefit the easement was acquired reimbursed the Coopera- for these costs.

Senator WALLOP. Thank you Mr. Betts.
Mr. Dalton.

STATEMENT OF D. VERNON DALTON, BOARD OF DIRECTORS, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, CLOVER VALLEY, WELLS, NEV.

Mr. DALTON. My name is D. Vernon Dalton and I am a cattle rancher residing in Clover Valley, Nev., which is a ranching community situated in the northeast corner of Nevada. I am an original and 23-year director and for many years president of the board of directors of Wells Rural Electric Co., a nonprofit electric cooperative.

I have been for 5 years a director of the National Rural Electric Cooperative Association, representing the Nevada cooperatives and the Nevada power district. I appreciate the opportunity to appear before this subcommittee. I speak on behalf of the National Rural Electric Cooperative Association, the Nevada Cooperatives and their thousands of customers.

I hope to be able to demonstrate to you that the fees charged by the public agencies for rights-of-ways and delays and administrative procedures required to obtain such rights-of-way are unduly burdensome on the members and consumers who receive power from these entities.

As background, it should be understood that the crossing of public lands with an electric distribution line adds far more value and benefit to those lands than any burden that is created. This is because it adds to the lands the availability of power and this is particularly valuable in the wide open spaces of the West, where many areas of land lie 50 to a 100 miles from the nearest distribution line.

Proof of this benefit is the fact that the Nevada cooperatives, while building thousands of miles of distribution line in the State of Nevada, have never had to pay a private owner for a right-of-way. These owners recognize this benefit to the lands crossed by the electric distribution lines. Yet the public agencies controlling these lands get not only the benefit to the lands by having the distribution lines available, but also have commenced charging fees for the use of the rights-of-way.

You must understand that elimination of these rights-of-way costs will directly benefit the consumers. The cooperatives I represent operate on a nonprofit basis, and all income to the cooperatives over and above actual costs of service, to a penny, are credited back to the consumers.

Therefore, we are not asking for a change in the law that would cause profits or additional benefits to our cooperatives. It is to the consumers.

The fees are quite burdensome and constitute an unfair cost to the consumers, but they are structured in an arbitrary manner. The charges made are $50 per mile or a fraction of a mile for the first 5 miles and a flat charge of $500 is made for right-of-way of 5 to 20 miles in length.

My cooperative recently had two projects, one 5.86 miles and one 5.10 miles, and yet a $500 flat rate had to be paid for each right-of-way.

These requirements constitute a particular problem in the northern Nevada checkerboard area. That is the area where every other section is controlled by the Government and every other section is privately owned. This is basically due to when the railroads were given land on 20 miles each side of the right-of-way as a subsidy when they were built through the West.

We may have a project of constructing a 10-mile line and yet only need to cross a small portion of federally controlled land. Nonetheless, the total project is delayed until the Federal rights-of-way are received, and construction cannot begin because the routing may be altered or the right-of-way could be denied.

There is a burden and expense in addition to the fee charged and that occurs in the administrative costs and delays required in going through the bureaucratic process of obtaining a right-of-way from a public agency. My cooperative has calculated a cost of $182.50 to every project that crosses a single foot of publicly controlled land and that does not include supervisory and clerical costs. The calculation is attached in the appendix to this statement.

Many cases could be cited where months and months of delay were incurred in serving a consumer, with a delay based totally on the inability to promptly receive public rights-of-way. I attach to my statement as appendix 2 a typical example of a case of over a 3½ month delay which caused a farmer to miss an entire growing season on a substantial acreage. There are 20 pivots in that particular area and he has lost a total season.

It is not infrequent to have delays of 6 months to 18 months from original application date.

I strongly urge your approval of S. 894 as a measure which will eliminate an unfair burden upon rural electric consumers at this time when rural electric consumers need help.

Thank you for your attention.

[The prepared statement of Mr. Dalton follows:]

PREPARED STATEMENT
OF
D. VERNON DALTON
BEFORE
PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE
OF
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
IN
SUPPORT OF SENATE BILL 894

AUGUST 4, 1982

My name is D. VERNON DALTON and I am a cattle rancher residing in Clover Valley, Nevada, which is a ranching community situated in the northeast corner of Nevada. I am an original and twenty-three (23) year Director, and for many years President of the Board of Directors of Wells Rural Electric Company, a non-profit electric cooperative. I am, and have been for five (5) years a Director of the National Rural Electric Cooperative Association, representing the Nevada cooperatives and a Nevada power district herein referred to as "Cooperatives".

I appreciate the opportunity to appear before the Subcommittee. I speak on behalf of the National Rural Electric Cooperative Association, the Nevada Cooperatives and their thousands of consumers.

I hope to be able to demonstrate to you that the fees charged by the public agencies for rights-of-way, and delays and administrative procedures required to obtain such rights-of-ways, are unduly burdensome on the members and consumers who receive power from these entities. The consumers of these entities are primarilily rural, and as you are aware agriculture and rural America is presently in a very depressed economic state. Nonetheless the costs and expenses incurred in obtaining these rights-of-ways over public agency controlled lands must be passed on directly to these consumers who can ill afford to pay.

As background, it should be understood that the crossing of public lands with an electric distribution line adds far more value and benefit to those lands than any burden that is created. This is because it adds to the lands the availability of power, and this is particularly valuable in the wide open spaces of the West, where many areas of land lie fifty (50) to a hundred (100) miles from the nearest distribution line. Proof of this benefit is the fact that the Nevada cooperatives, while building thousands of miles of distribution line in the state of Nevada, have never had to pay a private owner for a right-of-way. The owners recognize this benefit to the lands crossed by the electric distribution lines. Yet the public agencies controlling these lands get not only the benefit to the lands by having the distribution lines available, but also have commenced charging fees for the use of the rights-of-way.

You must understand that elimination of these right-of-way costs will directly benefit the consumers. The cooperatives I represent operate on a non-profit basis, and all income of the cooperatives over and above actual costs of service, to a penny, are credited back to the consumers. Therefore, we are not asking for a change in the law that would cause profits or additional benefits to our cooperatives. It is to the consumers.

The fees are quite burdensome and only add an additional cost to serve consumers. For example, in the last eighteen (18) months Wells Rural Electric Company, although only a small Cooperative, has paid $1,435.00 on filing fees, rental fees and monitoring fees to public agencies. I do not have the figures for the larger Cooperatives but they would be substantial, and add a significant annual cost to supplying power.

The fees are not only burdensome and constitute an unfair cost to the consumers, but they are structured in an arbitrary manner. The charges made are $50.00 per mile, or fraction of mile, for the first five (5) miles, and a flat charge of $500.00 is made for right-of-way of five (5) to twenty (20) miles in length. My cooperative recently had two projects, one 5.86 miles, and one 5.10, miles and yet a $500.00 flat rate had to be paid for each right-of-way.

These requirements constitute a particular problem in the northern Nevada checkerboard area. That is the area where every other section is controlled by the government and every other section is privately owned. We may have a project of constructing a 10 mile line and yet only need to cross a small portion of federally controlled land. Nonetheless, the total project is delayed until the federal rights-of-way are received, and construction cannot begin because the routing may be altered or the right-of-way could be denied.

There is a burden and expense in addition to the fees charged, and that occurs in the administrative costs and delays required in going through the bureaucratic process of obtaining a right-of-way from a public agency. My cooperative has calculated a cost of $182.50 to every project that crosses a single foot of publicly controlled land, and that does not include supervisory and clerical costs. A calculation is attached as Appendix (1).

Many cases could be cited where months and months of delay were incurred in serving a consumer, with a delay based totally on inability to promptly receive public rights-of-way. I attach to my statement as Appendix (2) a typical example of a case of over a 3½ month delay which caused a farmer to miss an entire growing season on a substantial acreage. It is not infrequent to have delays of six (6) months to eighteen (18) months from original application date.

I strongly urge your approval of Senate Bill 894 as a measure which will eliminate an unfair burden upon rural electric consumers, at this time when rural consumers needs help.

Thank you for your attention to this matter.

D. VERNON DALTON
Clover Route
Wells, Nevada 89835

Senator WALLOP. Thank you, Mr. Dalton.

Mr. Jilek.

STATEMENT OF RAY R. JILEK, PRESIDENT, WEST PLAINS ELECTRIC COOPERATIVE, INC., DICKINSON, N. DAK.

Mr. JILEK. My name is Ray Jilek and I am president of West Plains Electric Cooperative in Dickinson, N. Dak. We serve 3,167 members over 2,887 miles of land. We are a consumer-owned cooperative, nonprofit and I would like to speak in favor of S. 894.

As for REA policy, in all of these years, the landowners who furnish right-of-way easements have always furnished easements for free. And incidentally, I have a full text of remarks that I would like to have filed, but in the interest of time I will summarize.

Senator WALLOP. Yes, it will be included in the record.

Mr. JILEK. To continue, in the western part of our project, most of the landownership is checkerboarded, again, as it is with the previous statement. In other words, a lot of the land is owned by the Federal Government under one ownership or another.

Up to now the U.S. Forest Service has granted permits only at no charge to our cooperative. In return for the granting of that permit, we agreed to be subject to a 60-day line move. In other words, if they wanted us to move our lines, we were given a 60-day notice and we had to move those lines at no charge to the Forest Service.

Recently, we have been forced to bury all the lines which adds considerable additional expense and we cannot bury the lines on Forest Service the way we normally bury them on private lands. In other words, the Forest Service established a corridor and we have to bury these lines within that corridor, not necessarily the shortest route or the cheapest route. We have to go whichever way they dictate.

Now, in addition to these other requirements, they are trying to assess the very exorbitant annual charge and this year it is going to cost West Plains Electric Co-op $5,042. Our neighbors to the north, McKenzie Electric, already have paid $11,000.

Because of the additional lines and services being built in that area, both of our co-ops will have double assessments by the Forest Service. The rates apply to existing lines as well as to new lines. And I submit that in the area of public interest, we have three points to consider. In the first case, being that the land in that area is all checkerboarded with Forest Service, we have no other way of serving the consumers in that area that own every other section of land.

In addition to that, the Forest Service leases grazing land to ranchers in that area and West Plains Electric serves 30 of these wells that provide water to help in distributing the grazing in these pastures.

This also results in added carrying capacity for those pastures and additional revenue for the Forest Service.

Third, we serve 181 oil and gas wells where all of the minerals are owned by the Government, whether it be Forest Service or anyway all of the revenue goes to the Government. In these instances we do serve the wells and all of these loads underground.

The land after which the lines are in place is totally reclaimed. At the Muzzela hearings, we did show that not only was the land totally healed but in most instances there was better grass production where the lines had been buried than there was in the adjacent area where the ground was not disturbed.

We are also governed at West Plains by anti-discrimination rules which do not allow us to pass the cost of this additional assessment onto the people that are getting the benefits. Our cooperative is financed by the Rural Electric Administration, which is also——

Senator WALLOP. Could I just interrupt you for a second. What happens to those costs if they are not passed on to the consumers?

Mr. JILEK. The consumers that are getting service beyond the Forest Service property, that is what I mean. We have to spread these costs over all of the consumers in the system.

Senator WALLOP. I see; I understand. Thank you.

Mr. JILEK. We are financed by REA loans and so in effect REA being an agency of the Department of Agriculture is telling us not to pay any easement costs. The Bureau of Land Management or the Forest Service tells us we have to pay right-of-way costs.

We did some calculations that we have approximately 40,000 poles in our system. Right now with the news being out that the Forest Service is going to be making the assessments, the farmers are coming into West Plains and saying if the Forest Service is going to be paid for these alined rights-of-way on a per pole charge, that they are going to try to take action to be paid the same way.

If that happens, of course, we are going to be looking into something in excess of $100,000 a year, even though the farmers and landowners have given us easements which are a whole lot better than we have got right now with the permit.

With that, unless there are some question, that concludes my remarks.

[The prepared statement of Mr. Jilek follows:]

TESTIMONY OF
RAY R. JILEK, PRESIDENT
WEST PLAINS ELECTRIC COOPERATIVE, INC.
BEFORE THE SUB-COMMITTEE ON PUBLIC LAND
AND RESERVE WATERS OF THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

S.894
AUGUST 4, 1982

Mr. Chairman and Members of the Committee:

I am here to support S.894, a bill which would amend the Federal Land Policy and Management Act of 1976 to specifically exempt Rural Electric Cooperatives and Rural Telephone Cooperatives from special use permit fees. In early 1981, the United States Forest Service started charging Rural Electric Cooperatives (REC's) and Rural Telephone Cooperatives (RTC's) for permits to cross land administered by the service for the public benefit. The Forest Service charges apply not only to new lines but to existing lines for which no charge was made or anticipated. These will be charged annually for all overhead and underground lines unless S.894 is enacted. At the outset, this Sub-Committee should understand the following:

1. The special use permit fees are charges for discretionary permits, not perpetual or long term rights of way or easements. Under most of the permits of which I am aware, either overhead or underground line must be moved within sixty days at the Cooperative's expense whenever requested by the Forest Service. In testimony recently submitted to the Forest Service appealing a special use fees decision of the Custer National Forest supervisor, it was estimated that the cost to move an overhead line be approximately $5,000 per mile or $312.00 per pole. The value of such a permit in comparison to a long term or perpetual easement is nil.

2. Free permits have been granted to REA borrowers since 1938. In 1981 the policy changed. The stated reason for the policy change, as set forth in a May 5, 1982, letter to Congressman Ron Marlenne signed by R. Max Peterson, Chief of the Forest Services Washington Office is as follows:

   > "The intent of free permits was to promote the department's rural development objective of making power and telephone services available to rural areas. That objective is essentially complete now."

   Nothing could be further from the truth. West Plains Electric Cooperative is growing in direct porportions to demands placed on it by a burgeoning energy industry, larger farm and ranch usages and the increasing attractiveness of the rural way of life. In February of 1982 West Plains Electric Cooperative was billed by the Forest Service for 1,726 poles and 342,594 feet of underground line. It is estimated that at the end of the 1982 construction season, the length of line on Forest Service land will have doubled. Bear in mind that in one year this Cooperative will be constructing as much line on Forest Service land as it has heretofore constructed in all of its years in existence. To conclude as the Forest Service has that the objective of making power available to rural America is complete is absurd in view of the figures.

3. The Forest Service recognizes and recognized in the above referenced letter that "... free or reduced charges ought to be used only where subsidies are authorized and in the public's interest." Section 504(g) of the Act specifically provides that:

> "...rights-of-way may be granted, issued or renewed to non-profit associations or non-profit corporations for such lesser charge, including free use as the Secretary concern finds equitable and in the public interest."

That section provides Congressional recognition of 42 years of administrative policy and gives the Secretary the authority to exempt Cooperatives. Why has the Secretary not done so? The only answer can be that he feels that the service provided is not in the public interest. Again, the contrary is true.

West Plains Cooperative has 181 services that supply electric power to the production of oil and gas where the United States government is the mineral owner. This oil and gas brings revenue to the United States government without charge for the electrical service. That is paid for by the developer. The electrical service so provided brings needed fuel to the nation.

West Plains Cooperative services some 30 water wells on the grasslands. These water wells make it possible for the Forest Service to rent it's land on an animal unit basis. I myself have been a farmer and rancher all of my life in the area. I can tell you from personal experience that grazing cattle in large open areas such as those controlled by the Forest Service makes uniform distribution of adequate water supply an absolute necessity. If it weren't for the electric power to serve the water wells on these Forest Service pasture lands, there would be significant overgrazing of pasture land nearest to open water and undergrazing in the pastures that are now adjacent to electrically served wells. This benefit in soil conservation and preservation of our natural resources isn't charged to the U.S. government by West Plains Electric Cooperative and results in an increased carrying capacity of the lands serviced. This means increased revenues from fees charged by the Forest Service to the ranchers using this public land.

4. The decision by the Forest Service to abrogate long standing policy threatens the fine record of cooperation between the Federal govenment and consumers upon which the entire rural electrification program was built. In the past, the Federal government financed through loans the operations of REA's and RTC's and the construction of distribution Co-operatives. In recognition of this contribution farmers, ranchers and private land owners gave distribution line easements free of charge. Since the Forest Service has reversed it's policy of granting special use permits to us at no charge, we have already had landowners tell us that they are going to start charging for future easements. In addition to the obvious burden upon the Cooperative, another branch of the Department of Agriculture, the Rural Electrification Administration is demanding that we make every effort to avoid easement payments advising us that under no conditions should we pay for any easements. The anamoly of one branch of the Deparmment of Agriculture telling us not to pay for something another branch of the same department is charging us for would be humorous if it did not strike so deep at the cooperation that has been the hallmark of the entire Rural Electification and Telephone program.

5. The Forest Service is simply being unreasonable in it's charges. West Plains Electric Cooperative is being billed $5,042 for it's annual special use fees. If continued at the same rate for next year, the charges will be in excess of $10,000. The manner in which the fees were determined is shown by Exhibit A attached hereto. Now, as you all know, there are many ways that land can be valued. One is comparable sales but in the area of which I am speaking, there are very few small tracts sold. One method by which a figure can be obtained is by judging the value of the land based upon animal unit rentals charged by the Forest Service for land essentially identical to that in question. I am aware of one instance where the Forest Service is charging $3.34 per animal unit and is judging that a quarter section amounting to 160 acres will support 17 animal units. This is a charge of $56.78 per year for total use of 160 acres. Using the standard capitalization method of land valuation with no deductions for taxes or management at 2% (which is fair in our area) you reach a value of $17.74 per acre. Compare that, if you will, to the Badlands figure utilized by the Forest Service as shown on Exhibit A -- $150 per acre. Another instance of which I am aware involves land of a rolling prairie type and supports 91 animal units. Again, the charge is $3.34 per unit yielding an annual rental for 160 acres of $303.94. Capitalizing this figure by 2% without deductions for taxes and management, you have a value of $94.98 per acre. Compare that with the rolling prairie valuation of $200 per acre set forth in Exhibit A. Even assuming, for example, that rolling prairie is worth $200 per acre, the use of 55 acreas of such rolling prairie for buried cable at a 2% capitalization rate yields an annual rental figure of $220.

This is less than ½ of the $550 asserted by the Forest Service. Bear in mind too that we are assuming in the foregoing calculations that the use of Forest Service land for buried cable is equivalent to full use. This is not the case, once a narrow corridor ten feet wide is disrupted for the installation of cable the universal experience in our area is that the range is reclaimed within a very short period of time and results in a better stand of grass than adjacent undisturbed prairie.

The Forest Service's computation for poles is even more outrageous. These poles are low voltage distribution lines which involve no disruption of the land except for the land upon which the pole actually sits. Assuming that a pole will utilize nine square feet of land, and this is generous, the 1,726 poles that the Forest Service is billing our Cooperative $4,315 for really only take up .3566 acres of land. Charging over $4,000 for this small acreage is incredible. Giving the Forest Service the benefit of doubt and assuming for sake of argument that the Cooperative should pay for the continued occupation of a ten foot wide corridor all along the aerial cable, computations would show that our Cooperative is utilizing only 130.73 acres of mixed types. Probably half of that is rolling prairie and half of that is badlands. Subscribing a generous $200 per acre for rolling prairie and $75 per acre for badlands and capitalizing at 2% the total annual fee should be $359.59 -- this compared to $4,315 the Forest Service charged.

Another important distinction is that we are talking about low voltage distribution line not transmission lines, in other words, these are lines which might average a single customer per mile of line or less. The value to the Cooperative of the Forest Service's permission to utilize it's land is considerably less valuable for that kind of line than it would be for a transmission line carrying perhaps 30 times the power.

7. Finally, I must take exception with statements so often made by the Forest Service and the Department of Agriculture that the costs of special use permit fees will merely be passed on to consumers. This just isn't so. In the cases of the 30 water wells I have described and the 181 oil field services, the real customer is the United States Govenment through the Forest Service. The Forest Service is not a member of our Cooperative. The oil company or the rancher is. If our Cooperative was to somehow be able to pass the costs of these special use fees on to the oil companies or the farmer or rancher, they would have no way to pass it on to the Forest Service. But more importantly, our Cooperative is governed by anti-discrimination rules. Merely because we are crossing Forest Service land does not permit us to charge these users a rate for our power different from anyone else. A farmer who receives an increased bill because of a special use fee would be most unhappy and rightfully so.

The result is that the special use charge as well as all the extra costs incurred by the requirements of the Federal govenment in building on Forest Service land are borne by the Cooperative and not reflected in charges to the actual customer or entity benefited.

CONCLUSION

It would have been nice if the Forest Service had not changed four decades of public policy but they did. It would be a step forward if the Service would recognize now that the special use permit fees policy should not be extended to non-profit cooperative associations but the department will not do so. It remains to Congress, then, to intervene on our behalf and on behalf of cooperatives situated similarly to West Plains Electric Cooperative. I urge favorable action on S.894.

Thank you.

FEE DETERMINATION STATEMENT
FOR CONSTRUCTION, OPERATION AND MAINTENANCE
UNDERGROUND TELEPHONE & POWERLINE PERMITS

West Plains Electric Date 2-17-82

Amendment # ____________

Fee determination statement:

Underground telephone line and related facilities rights-of-way fees are subject to a minimum of $25.00 per calendar year or any part thereof. This minimum fee will not be prorated for any part of a calendar year.

*Rental fees will be rounded up to the nearest whole dollar and will be prorated for portions of a calendar year.

EXHIBIT A

ANNUAL RENTAL FEE:

1. Land Value: Rolling Prairie $200/acre x 5% = $10.00/acre
   Badlands $150/acre x 5% = $ 7.50/acre

2. Facilities:

a.	Line length - Rolling Prairie	239,794 feet
	Right-of-way width	10 feet
	Acreage - Rolling Prairie	55 acres

Fee: $10.00 x 55 acres = $ 550.00

b.	Line length - Badlands	102,800 feet
	Right-of-way width	10 feet
	Acreage - Badlands	23.6 acres

Fee: $7.50 x 23.6 acres = $ 177.00

* TOTAL RENTAL FEE $ 727.00

Recommend approval: __________ Date 2/18/82

Authorized officer approval: David A. Fillus Date FEB 25 1982
Authorized Officer

1/82

FEE DETERMINATION STATEMENT
FOR CONSTRUCTION, OPERATION AND MAINTENANCE
SINGLE POLE TELEPHONE & POWERLINES

West Plams Electric Date

Amendment #

Fee Determination Statement:

Overhead telephone and powerlines and related facilities right-of-way fees are subject to a minimum of $25.00 per calendar year or any part thereof. This minimum fee will not be prorated for any part of a calendar year.

*Rental fees will be rounded up to the nearest whole dollar and will be prorated for portions of a calendar year.

ANNUAL RENTAL FEE:

EXHIBIT A

1. Land rental value fee:

Single pole settings: $50/pole x 5% = $2.50

Power substation site: $1300/acre x 5% = $65.00

Fee: $2.50 x 1726 poles = $ 4315.00

$65.00 x ____ acres = $ ____

TOTAL RENTAL FEE: $ 4315.00

Recommend approval: Date 2/18/82

Authorized officer approval: David A. Filius Date FEB 25 1982

Authorized Officer

1/82

Number of poles estimated @ 16/mile
Total length of line - 569,493' ÷ 5280 = 107.9 miles x 16 = 1726 poles

Senator WALLOP. Thank you very much, Mr. Jilek.

Mr. Backstrom.

STATEMENT OF LARRY BACKSTROM, MANAGER, ARROWHEAD ELECTRIC CO-OP ASSOCIATION, LUTSEN, MINN.

Mr. BACKSTROM. Mr. Chairman, my name is Larry Backstrom and I am the manager of Arrowhead Electric Cooperative, an electric distributor, and we are located in the northeastern portion of Minnesota.

We are bordered on the north by Canada and we are bordered on the south and the east by Lake Superior. Everything that is in green on this map is the Federal lands. Everything in red is the State lands. In the area we serve 94 percent of the land in our service is either State or federally owned and predominantly federally owned.

So much like our neighbor, North Dakota here, we cannot serve anybody without crossing Federal lands. We can understand perhaps the need and the appropriateness for the application of user fees where there is an expense to the Government for construction and/or maintenance such as for waterways but we maintain our own rights-of-way and right from the construction, the installation, the future maintenance and all costs associated with that and we do not feel it would be appropriate for us to also be paying a user fee when we are not the sole user of that right-of-way after it is in place.

It is being used by skiers and snow mobilers and hikers and hunters. And with our own maintenance of that facility we feel we should not be assessed with fees for its use and, therefore, we do support S. 894.

Secretary Block had written a letter to us indicating that of all of the electric cooperatives in the Nation, of which there are many thousands, they expected to receive revenues of approximately $120,000 annually for these user fees.

And in those situations, our small 2,000-member cooperative would be required to pay about 7 percent of that total national debt and we don't feel that is an appropriate consideration for our size and our density and our difficulty of installing the facilities.

The Federal Land Management Policy Act of 1976, chapter 251.57, section (b)(2) is contradictory to section (b)(1). That is (b)(2) indicates that nonprofit organizations would not be assessed a fee. However, (b)(1) jumps in there and says except for municipal and electrical cooperatives. And we don't feel that is an appropriate stipulation of the act.

In our service area, which is the northeastern section of Minnesota where there is a tremendous amount of Federal land, the Federal Government does pay to the county certain fees in lieu of taxes and these are based on a number of different acts that Congress has passed, so there is actually, what it amounts to is the Forest Service paid our county either, one, three-fourths of one percent of land value or they may pay 75 cents per acre or they may pay 10 cents per acre as long as it does not exceed $50 per head count according to the population.

So we feel that our fees being based on 5 percent of land value far exceeds the equivalent fee that the Government pays to our county.

In summary I think that we should amend that section of the act (b)(2) to include cooperatives, electric cooperatives, telephone cooperatives from being excluded. We are probably the least able to pay for the service being sparsely populated. Our easements are used by others. We don't have the sole use for those easements.

We maintain these easements at no cost to the Government and the Government can serve all of the people regardless of the isolation and we cannot do this without going across Federal lands.

Mr. Chairman, the electric co-ops do need to be excluded from this section of the act.

[The prepared statement of Mr. Backstrom follows:]

STATEMENT OF
LARRY BACKSTROM, MANAGER
ARROWHEAD ELECTRIC CO-OP ASSN.
ON S. 894
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
AUGUST 4, 1982

Mr. Chairman, my name is Larry Backstrom and I am the Manager of Arrowhead Electric Cooperative, an electric distribution cooperative furnishing electric service to 2300 rural customers in Northeastern Minnesota.

We are bordered on the North by Canada and on the South and East by Lake Superior.

Our sparsely populated rural area is presently plagued by drastic slumps in iron ore mining, logging and the tourism industries.

We serve a county where 94% of the land area is controlled by the federal or state government. As this color coded map clearly illustrates all areas shaded in green represent federal lands while the red designates state lands. It is virtually impossible for us to serve anyone without utilizing "public lands."

We are required by law to provide electric service to anyone who requests it. Now we are required by law to pay a substantial price for doing this.

Our service area is in and around the Superior National Forest which means trees and reasonable widths must be maintained to insure an acceptable level in our continuity of electric service. We need wider Rights of Way, not less as has been a suggested means of reducing our annual fee.

REA Bulletins direct us to achieve a maximum of 5 hours interruption per meter per year. Our 5-year average is in excess of 20 hours per year and 78% of this trouble is caused by trees.

We're hard-pressed to budget adequate revenue to proper maintain the Rights of Way. One or two major storms, such as occurred this spring, can easily wipe out the Rights of Way maintenance budget for a small system like ours.

We can understnad, perhaps, the need and appropriateness for the application of "User Fees" in cases where there is an expense to the government for construction and/or maintenance such as with the nations waterways but, we are the ones who maintain our own facilities. In addition, we are not the sole user of these Rights of Ways... they're utilized by hikers, hunters, cross-country skiers and snow mobilers... a multiple use function for the public on public lands.

Secretary Block stated in his letter of February 1, 1982, and I quote, "...our calculations indicate that the majority ... of the 280 electric cooperatives holding... permits... would fall within a $10.00 to $500.00 annual fee range. Less than 20 would pay over $1,000.00." Shortly thereafter we received our bill for $8,264.00! We've had years when we didn't even make and eight thousand dollar margin!

As a cooperative we are non-profit and any margins realized are allocated back to the membership. With this in mind the Federal Land Policy Management Act of 1976, Chapter 251.57 Section 62 certainly contradicts bl. Electric cooperatives are definitely non-profit and should fall under the exclusion of b2 rather than included under bl.

It just seems rather improper to us that the federal government, with its vast holdings in our service area, has a choice of paying to our County in lieu of taxes; (1) 3/4 of 1% of land value; (2) 75¢ per acre or (3) 10¢ per acre but not more than $50.00 per population head count.

At the same time they expect to receive 5% of land value or $15.25 per acre. This is an extremely high fee for use of public lands to serve the public need.

Senator **WALLOP**. Thank you, Mr. Backstrom, for your testimony. Some of that looks almost as bad on the map as Nevada's does.

Warren Fraser, my friend from Sundance.

STATEMENT OF WARREN H. FRASER, GENERAL MANAGER, TRI-COUNTY ELECTRIC ASSOCIATION, INC., SUNDANCE, WYO.

Mr. **FRASER**. Mr. Chairman and Senator Melcher, as I have been requested, of course, I will brief this statement we have filed. It might be of interest to note that in our cooperative, and I am representing the members of Tri-County Electric, who service Campbell, Crook, and Weston Counties in Wyoming, it is interesting to note that in our case we have passed on any right-of-way fees to the member.

And if you will note in our statement, we have covered two cases. These happened to be the first two cases that were brought to my attention under the new policy of the land management, in which one case, the annual billing was increased by 41 percent, another case in which it was increased by 87 percent, just for the additional Federal right-of-way annual payment.

I think that I will summarize our statement here by reading a part of a paragraph in a letter from one of our rancher members to his Senator, Senator Wallop, in the state of Wyoming. You may note here that we do not pay charges for distribution of right-of-way and I think that is pretty common in the State of Wyoming.

This is a letter from a man named Christy Smith and I quote,

> As you are aware from your experience, we commonly give right-of-way to our local cooperative so that our neighbors can receive electrical service. As you can see charging for every foot of right-of-way would raise our electric bills out of sight. Not only would these annual fees cause excess electricity cost, but they increase the red-tape and involvement of the Federal agency in keeping track of the billings every year.

Earlier in this hearing some comments were made about fair market value. The other day I read a news release by the Bureau of Land Management in one of our magazines, wherein they defined fair market value as the charge that people are paying for a particular right-of-way or service and that the BLM would pursue that method of determining the fair value.

We pay no dollars for right-of-way for electric facilities to our members. Those rights-of-way are given freely so that, as Mr. Smith put it, our neighbors can have power.

We strongly support S. 894 and hope that you can achieve passage of that bill.

[The prepared statement of Mr. Fraser follows:]

STATEMENT OF
WARREN H. FRASER, GENERAL MANAGER
TRI-COUNTY ELECTRIC ASSOCIATION, INC.
S. 894
BEFORE THE SUB-COMMITTEE ON PUBLIC LANDS AND RESERVED WATER OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

U.S. SENATE
AUGUST 4, 1982

Mr. Chairman and Members of the Sub-Committee

The following statement is presented by Warren H. Fraser, General Manager of Tri-County Electric Association, Inc., Sundance, Wyoming which serves the counties of Crook, Campbell, and Weston in the state of Wyoming.

The purpose of this statement is to point out the problems and inequity caused by annual rental payments on Federal Lands for right-of-way and also to request action to eliminate these excessive charges and annual payments.

To date our cooperative has been charged for a number of Federal Land Use Permits for electric power line rights-of-way. The total annual payment to the Medicine Bow National Forest alone, over the past year, has been $5,741.38. These charges have been irrespective of the land use and in some cases the right-of-way permit charge is almost equivalent to the total revenue received by the cooperative from the customer on the line. Attached to this statement you will find a letter from Tri-County to Mr. Rollens, Forest Supervisor, dated June 29, 1981 which specifically points out two of these permit cases.

The first case was a permit for an extension to Gerald Boardman's water well. In this case the total mileage on the permit was 4.217 miles, which resulted in an annual fee of our system, Christy K. Smith, to his Senator, Malcom Wallop where in he states, "As you are aware for your experience we commonly give rights-of-way to our local cooperative so that our neighbors can receive electrical service. As you can see, charging for every foot of right-of-way would raise our electric bills out of sight. Not only would these annual fees cause excessive electricity cost, but they increase the red tape and involvement of the Federal agency in keeping track of the billings every year."

Our Board of Directors has become so concerned with this action of the Federal Government that they have, by Board Resolution, directed me to bring this matter to the attention of the Secretary of Agriculture and the members of our Congressional delegation. Attached is a copy of a letter dated February 18, 1982, with its reply, to Representative Richard Cheney, which is typical of the letters forwarded to our delegation. Not only are our Directors disturbed, but also the entire membership of the National Rural Electric Association of the United States. Action was taken in their national convention, which was held in February 1982. They unanimously passed Resolution #G-12, which urged the Administration and Congress to rescind fees charged to non-profit utilities by the Federal Government.

In conclusion, we strongly object to annual payments for rights-of-way on Federal lands. We certainly are not critical of the excellent work and capability of those in the Federal agencies which administer public lands, but we are critical of an inflationary policy which reduces the ability of the farmer to produce food and fiber for our nation. This concludes our prepared statement.

SERVING
CAMPBELL CROOK WESTON
COUNTIES

TRI-COUNTY ELECTRIC ASSOCIATION, INC.
BOX 457 · PHONE 283-3531
SUNDANCE, WYOMING 82729

June 29, 1981

Mr. Donald L. Rollens
Forest Supervisor
Medicine Bow National Forest
605 Skyline Drive
Laramie, WY 82070

RE: Special Use Permits for Overhead Power Lines

Dear Mr. Rollens:

Recently two special use permits from the Medicine Bow National Forest have been brought to my attention because of the extra high annual fees charged on each of these permits. The purpose of this letter is to provide some details and to recommend that the Forest Service reconsider the level of fee for small overhead electric distribution lines.

The first case was brought to my attention in a letter signed by Mr. Cameron on June 9, 1981. This particular permit was an extension to Gerald Boardman's water well. As you know the criteria settled on by the Forest Service is at the level of $4.00 per rod for the determination of annual fees. In this case, the total mileage on the permit was 4.127 miles, which resulted in an annual fee of $264.13. In this particular case, that four miles of line serves six stock wells. In reviewing our billing records we find that the total revenue from those six stock wells, in the calendar year 1980, was $648.06. Adding to their power bill a right-of-way assessment from the Forest Service of $264.13 would have raised their total power cost 41 percent, which certainly could be considered inflationary and an undo burden for the use of the permit.

The second case was a permit for the homesite of Leonard Whisler which at the outset will be a stock well and then later on will become a homesite. This was referred to in the letter from Mr. Cameron, dated June 11, 1981. For this case, there was an extension for 1.476 miles which was charged out at an annual fee of $94.00 per year. For his initial service, Mr. Whisler, will be charged a gross charge of approximately $108.00 per year. The Forest Service charge will increase his power bill by 87 percent.

Tri-County Electric Association, Inc. maintains ongoing policies for payment of right-of-way. Right-of-way payments for large transmission facilities and small distribution lines are not the same. In our case, for commercial lines the charge for a right-of-way is $30.00 per structure, which turns out to be approximately $1.00 per rod, when compared to your calculation. This right-of-way payment is made only on commercial services and not on farm residential. As a matter of fact, our members give at no charge rights-of-way to their neighbors for power lines which cross their property. My recommendation is that a distribution line right-of-way annual charge should not be based on a fee greater than $1.00 per rod.

In discussing this matter with Mr. Al Martin, of your department, we found that the fees were determined in a rational manner and that such comparisons as a $5.00 per rod fee, charged by Pacific Power and Light, were utilized. It is our understanding from Pacific Power and Light employees that until recently they have not charged these fees, but in the last year or so their customers have become of such a commercial nature, that such fees are being paid. I think that there is a basic difference in the federal law which applies to the electric distribution cooperative, which should be recognized by every federal agency. Our purpose is to provide power and electric energy to every rural consumer who requires it. We have been able to serve customers which would not be profitable for private companies because we have kept our costs at a minimum. We would recommend that the distribution fees, which are now being charged by the Medicine Bow National Forest, are absorbitant and do feed inflation in a manner which should not be fostered by anagency of the Federal Goverment.

We will pay these fees under protest and charge them to our members and we hope that adjustment to a more reasonable level may be effected by the Forest Service as soon as possible.

It is my understanding that these fees will not be subject to adjustment after August 5, 1981, so this date should be considered in your re-evaluation.

Very truly yours,

Warren H. Fraser

Warren H. Fraser
General Manager

WHF/ckh

cc: Craig Thomas
Wyoming Rural Electric Association

File

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
MEDICINE BOW NATIONAL FOREST
605 Skyline Drive
Laramie, Wyoming 82070

2720

July 13, 1981

Warren H. Fraser, General Manager
Tri-County Electric Association, Inc.
Box 457
Sundance, WY 82729

Dear Warren:

We are in receipt of your June 29, 1981 letter and wish to advise you that the Forest Service will consider your concerns on recent fee assessments paid for power distribution lines.

The Regional Office in Denver is being requested to consider the REA operations in our Forest as well as other Forests of the region. The Regional Forester will consider the REA operations in regard to fee structure for individual remote area power distribution lines versus commercial power distribution lines.

Please be advised that any decision made by the Forest Service will be related to your office as soon as it is received by our office. There may be a delay in the official determination of your request to allow proper evaluations to be made. Adjustments to current 1981 fees paid may be made if the fee rate can be adjusted.

Sincerely,

D L Rollens

DONALD L. ROLLENS
Forest Supervisor

6200-11 (1/69)

SERVING
CAMPBELL, CROOK, WESTON
COUNTIES

TRI-COUNTY ELECTRIC ASSOCIATION, INC.
BOX 930 - PHONE 283 3531
SUNDANCE, WYOMING 82729

MEMBER

February 18, 1982

Representative Richard Chaney
427 Cannon House Office Building
Washington, D.C. 20515

RE: Excessive charges for Rights-Of-Way across
Federal Lands

Dear Representative Chaney:

The purpose of this letter is to inform you concerning the excessive charges for rights-of-way being charged by Federal agencies, specifically the Medicine Bow Forest. It is also to request action to eliminate these excessive charges and annual payments. To date our cooperative has been charged for a number of Federal Land Use Permits for electric powerline rights-of-way. The total annual payment to date from this past year was $3,780.91 for Medicine Bow Forest Permits. The calculation for this excessive charge was made at the rate of $4.00 per rod, irrespective of the type of powerline involved. In other words, irrespective of the land use. In some cases the right-of-way permit charge is almost equivalent to the total revenue received by the cooperative from the customers on the line. Enclosed you will find a letter from Tri-County to Mr. Rollens, Forest Supervisor, dated June 29, 1981, which specifically points out two of these permit cases. The level of charge is extremely excessive and not consistant with charges from other Federal agencies, such as, the Black Hills National Forest.

Enclosed you will also find a letter from Mr. Rollens dated July 13, 1981, in which he informs us that he has forwarded our recommendations to the "Regional Office in Denver". We have received no correspondence since that date, and so far as we know no action has been taken. Our Board of Directors has become so concerned with this action of the Federal Government that they have, by Board resolution, directed me to bring this matter to your attention and also to the attention of the Secretary of Agriculture and the other members of our Congressional Delegation. Not only are our Directos distrubed, but also the entire memberhsip of the National Rural Electric Association of the United States. Action was taken in their National Convention which was held this past week. They unanimously passed Resolution #G-12, which urges the Administration and Congress to recend fees charged to non-profit utilities by the Federal Government.

In conclusion, we strongly object to annual payments for rights-of-way and to the excessive charges fostered by the Medicine Bow Forest. We certainly are not critical of the excellent work and capability of those in the Forest Service, but we are critical of an inflationary policy which reduces the ability of the farmer to produce food and fiber for our nation.

It is our intention to support you in any changes that can be affected by your office to rectify this situation.

Very truly yours,

Warren H. Fraser
Warren H. Fraser
General Manager

WHF/mjw

Enclosures

DICK CHENEY
WYOMING

Congress of the United States
House of Representatives
WASHINGTON, D.C. 20515

June 30, 1982

Dear Warren:

Since you wrote in February about Forest Service charges for power line rights-of-way, I have been in touch with both the Forest Service and the Bureau of Land Management to discuss the situation. This issue also came up back in May when a number of Wyoming REA representatives were in Washington for the annual legislative rally.

I am enclosing copies of letters I received from these two agencies. BLM officials indicated to me that they are reviewing their appraisal and fee-determination methods, and that they will be reporting to BLM Director Burford with some recommendations before long. I will continue to monitor their activities and will let you know of any new developments.

I have also taken the liberty of contacting Don Rollens to ask about the status of the review in his region.

After you've had a chance to look over the agencies' letters, I would welcome any further comments you might care to pass along.

Best regards,

Dick

Dick Cheney
Member of Congress

Mr. Warren Fraser
General Manager
Tri-County Electric Association
Post Office Box 930
Sundance, Wyoming 82729

Enclosures

UK

Christy K. Smith
19 NORTH SUMMIT
NEWCASTLE, WYOMING 82701
PHONES (A C 307) [illegible]

February 19, 1982

Senator Malcom Wallop
452 Russell Senate Office Building
Washington, D.C. 20510

RE: Annual Right-Of-Way Rental Fees

Dear Senator Wallop:

During our conversation in Casper on February 17, 1982, we discussed Federal Regulations which require annual payments by cooperatives for rights-of-way. The purpose of this letter is to give some of the reasons that I feel annual payments are wrong.

During the past year Tri-County Electric Association, Inc. has received billings from the Forest Service and Bureau of Land Management for annual right-of-way payments. From the Medicine Bow Forest alone, Tri-County received twenty-four such billings.

As you are aware from your experience, we commonly give right-of-way to our local cooperative so that our neighbors can receive electrical service. As you can see, charging for every foot of right-of-way would raise our electric bills out of sight. Not only would these annual fees cause excess electricity cost, but they increase the red tape and involvement of the Federal Agency in keeping track of the billings every year. You may be aware that every five years the Agency will reappraise the rental price and raise it.

My main concern is that as the idea of annual rental is spread to every land owner for every electrical power pole in the United States, they would be charging annual fees and the results would be terribly inflationary.

If you could possibly use your influence so that if a payment is made, it would be a one time payment for the life of the project, then all of this unnecessary Federal involvement could be eliminated and cooperatives could have a legal interest in a right-of-way rather than a rental.

If there are ways to eliminate these policies, I would certainly appreciate your efforts.

With kindest personal regards,

Christy

Christy Smith
Member of Board of Directors
Tri-County Electric Association, Inc.

Senator **Wallop**. Warren, thank you. Let me just ask you, what was the response of the Forest Service when you told them that you paid no right-of-way fees and therefore the fair market value was zero?

Mr. **Fraser**. The remark was made to one of our local Forest Service reps and so far as he was concerned the policy was fixed and there would be an annual rental charge.

As far as the details are concerned, I was referred to the Laramie office, which is one step up from our local officers, and the information I received there was that a survey was taken in the area and particularly south of us in Converse County, Pacific Power and Light, which is a private power company, is charging $5 a rod for their rights-of-way. And these are primarily to industrial users such as oil fields.

On this basis, a fee was set of $4 per rod and when you take the 20 percent of that or the 5 percent of that from the annual fee, we ended up with something over $90 a mile, $60 or $90 a mile. So my purpose was not to complain about the fee but the fact that there is a fee and should not be.

Senator **Wallop**. I understand that. It is difficult always to tackle the guy on the ground who is carrying out policies made in Washington, that he has little flexibility on.

Mr. **Fraser**. And we certainly, as we say in our statement, Senator Wallop, we are not criticizing those people out there who are administering the Federal lands. We think they are doing an excellent job and frankly we have noticed in the past year or so much better service than we have had in the past.

Senator **Wallop**. And I think Senator Melcher, who was in the House, when it was passed, clearly is able to say by experience what was the intention of Congress when it was passed.

You may note that these regulations were passed under the previous administration and they are only being revisited, but we could not get much of a comment as to what that visitation might produce for us. I believe that we ought to be able to get something done, either administratively or through the hammer held over their heads by this bill.

It is hard to promise that, given the timeframe and other things that are here, but we will certainly try. I want to express my appreciation to all of you for excellent testimony. I am sorry in a way that the administration is not here to listen to the kinds of problems that your customers have and that you have in serving your customers.

And I think your point is to that the revenue from the right-of-way fees exceeded the payments in lieu of taxes for the communities in the area is a pretty telling comment on some kind of distortion in policy that has taken place and we will see what we can do.

John, do you have any questions or comments?

Senator **Melcher**. I want to assure you, Mr. Chairman, and Mr. Betts and all of you, that in drafting the language in this particular section there are none of us on the subcommittee, the one that we were intimately involved with, that ever thought that any charges would be made for rights-of-way under any of the conditions that you have mentioned, we thought the language was clear.

We knew what those particular current secretaries thought about rural telephone cooperatives—who was the Secretary? John Klepty, I believe Butz was still there in 1976. We had had in fact assurance that everything you have described would be cared for in this language in 504(g) of FLPMA, no rights and no charges under all of the circumstances that have been described here today.

And I too wish the people from the administration had stuck around, because Eleanor Swartz was there and she was the attorney assigned by the Secretary of the Interior to assist in drafting the FLPMA and for that I still see the people who worked with it from the Department of Agriculture and they knew full well what was the intent and knew full well why we gave this to them to allow these secretaries to have some discretion.

If there is anything we do too much around here that is to allow the Secretary of the Interior and the Secretrary of Agriculture to have too much discretion, because you constantly find out that it is their regulations and their interpretation of the language that is adopted into the law, put into the statute books, as the one that is going to govern.

And it is not Government by representation; it is Government by bureaucracy. No wonder people get frustrated. I am frustrated too. We should be more specific in our language and we should have just said, as this bill says, you are not going to charge for easements for rights-of-way for rural telephone cooperatives.

Because there is no example that they gave us at that time that really meant very much where in some odd case where it might be wise to allow the Secretary to have that much discretion. The only way to deal with these bureaucracies when they get hard-nosed is not argue with them anymore, just change the law and do it and that is what we should have done in the first place.

I hope we pass this bill just that way. I don't want to monkey around with their solicitors from Interior and Agriculture coming around and saying that we think maybe we can ease and another Secretary tells us that because the Secretary is going to change and those solicitors are going to change and if they don't change they will change their minds. So we better change the law and make it very clear and forthright and this bill does that.

There are very few odd instances and I think it would be extremely rare where it would ever be justified to charge electric or rural telephone cooperatives for easements. It is simply not worth giving them the opportunity to hang all of these charges on it. And one of you said in your testimony here, maybe several of you did, in pointing out what the fees are and one of you said that this is going to be renewed. You are going to have to do it over again and they sure will. And I will tell you, you would be amazed at how much that costs.

It just costs a bundle to have these fellows drive out in their pickup and go back to their office and go through the rigmarole of all of the paperwork. So we will save the Government and the country a lot of money in the areas where there is good service, where the cooperatives serving.

It is about time we made this little correction. I did not think we would ever have an argument over it. I thought it was explicit enough, not that they were thinking exactly the same way we were, but we trusted them. I think we were wrong and we should not have trusted them. I think we should make it clear now exactly what we mean and put it into law and be done with it.

Thank you very much. Thank you, Mr. Chairman.

Senator **Wallop**. Thank you, John. And thank you all for coming. We appreciate your efforts in getting this far and your testimony, which I think made a good record for the case in behalf of S. 894.

[Whereupon, at 4:50 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

1982 AUG 20 PM 1: 39

MIC
MOTORCYCLE INDUSTRY COUNCIL, INC.

Government Relations Office
Washington, D.C.

August 18, 1982

The Honorable Malcolm Wallop
Chairman, Subcommittee on Public
Lands and Reserved Water
Committee on Energy and Natural
Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing on behalf of the Motorcycle Industry Council, a nonprofit, national trade association which represents manufacturers and distributors of motorcycles and suppliers of related products and services, to express support for H.R. 861, a bill to amend the National Trails System Act.

In particular, I would like to indicate support for Sec. 207(h) and Sec. 210 of the bill. Sec. 207(h) affirms the fact that a broad range of potential trail uses, including motorized trail uses, are allowed on designated portions of the National Trails System. Sec. 210 authorizes a volunteer trails assistance program to facilitate planning, development, and management of trails by volunteers and volunteer organizations.

The Motorcycle Industry Council requests that you schedule H.R. 861 for Subcommittee mark-up as quickly as possible to ensure Senate passage of the bill.

Sincerely,

John F. Wetzel
Director
Federal Government Relations

JFW/wgv

1235 Jefferson Davis Hwy., Suite 1410 • Arlington, VA 22202 • (703) 521-0444

NATIONAL TRAILS COUNCIL

Ms. Jeanette Fitzwilliams
13 W. Maple Street
Alexandria, Virginia 22301
(703) 548-7490

August 11, 1982

Mary Lou Grier, Deputy Director
National Park Service, D/I
Washington, D. C. 20240

Dear Ms. Grier:

I heard your testimony on HR861 with interest and thank you for your support on so many points. However, there is one point on which I would like to take issue with you and try to change your mind.

You opposed the provision for a biennial trail plan on the ground it was not needed and there was no money for it.

As you spoke it seemed to me that you considered the proposal to be primarily for a plan for National Scenic, Historic or Recreational Trails. And, in that case, I agree with you. However, in so doing, you completely miss the point of why a biennial trail plan is needed.

Quite naturally, now as in the past, you view the plan from the point of view of your own agency responsibility and, possibly, that of the Forest Service. That is not how the rest of us view such a plan. We are interested in trails and all that concerns them, not just in "National Trails". I, personally, attended five of the HCRS meetings (Harpers Ferry, New England, Atlanta, South Carolina, Indiana) to evaluate trail problems for the recent assessment. In every one of them, the participants said, loud and clear: "National Trails are of minor importance; what we are interested in is a network of trails to meet local needs and the measures needed to get them." This did not get through to HCRS and, now apparently, to NPS which still seems to concentrate on "National Trails."

As I tried to point out in my own testimony, federal action is important for what we, the trails community, want. In addition to benefits conveyed by national designation, federal action influences the future of trails through the Land & Water Conservation Fund, through the procedures and regulations designed by federal agencies to implement federal laws, through the fact that much of the land suitable for trails is federally owned and due to the fact that federal legislation on taxes and fees, tax incentives, railroad abandonments, landower liability and protection, to name but a few, can materially aid or baffle trail development.

A trails network is the sum total of the efforts of individual citizens and clubs; cities, counties and states; and federal agencies. And it should be viewed as a whole. Working together, these groups need to review the trails situation as it develops and report to Congress, via a biennial plan, what steps need to be taken. Senator Wallop indicated many of the topics that need to be addressed.

The necessity of reporting to Congress every two years in and of itself legitimizes efforts now being made along these lines and encourages cooperation among the many groups.

That the Department of Interior should be the lead agency and should delegate its responsibility to the National Park Service is only natural. But the plan must be a truly joint effort with NPS acting largely as staff. The recommendations must evolve out of the exchange of ideas among the various components of the trails community. They must be concrete, well thought out and ready for introduction as bills, guidelines or regulations.

We realize there is a budget crisis but preparation of such a plan need not be costly. We do not want more expensive studies. What we do need is "in-kind" help, an attitude of cooperation throughout the federal agencies (with each other and with us and the states) and the leadership from the National Park Service with which the states and the trail users and maintainers can work.

I hope that this letter has induced you to view the idea of a plan somewhat differently. Over the past years we have been developing excellent rapport over trail matters. We believe that the need for a biennial plan can strengthen and give direction to our cooperation with you as well as meeting a very real need throughout the country--one that more and more in these days must to be met by the efforts of the private sector.

Sincerely

Jeannette Fitzwilliams
President

Copy: Senator Wallop

Law Offices

Duncan, Weinberg & Miller, P. C.

SUITE 1200
1775 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006
(202) 467-6370
TELECOPY (202) 467-6379

WALLACE L. DUNCAN
EDWARD WEINBERG
FREDERICK L. MILLER, JR
JAMES D. PEMBROKE
PHILIP L. CHABOT, JR.
RICHMOND F. ALLAN
J. CATHY LICHTENBERG
CAROL MacKINNON
JOHN WYETH GRIGGS
CHARLES F. HOLUM
PETER S. GLASER
MARK S. LAUFMAN
JANICE L. LOWER

Duncan, Weinberg, Miller & Hensley
DAN A. HENSLEY
MARGIE MAC NEILLE

ALASKA OFFICES
420 L STREET
ANCHORAGE, ALASKA 99501
(907) 276-1680

P. O. BOX 2398
KODIAK, ALASKA 99615
(907) 486-4771

1982 AUG -9 PM 5:08

August 5, 1982

The Hon. Malcolm Wallop
United States Senate
Room 204 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

I represent the East Bay Regional Park District of Oakland, California. I write on East Bay's behalf to urge you to support the National Trails System Act Amendments, H.R. 861, during consideration of the bill by the Public Lands and Reserved Water Subcommittee.

East Bay is a special purpose unit of local government serving Alameda and Contra Costa Counties, California, east of San Francisco Bay. The District operates over forty parks, shorelines, recreation areas, preserves and wilderness areas, which serve a regional population of several million persons. East Bay has been a recipient of matching grants from the federal Land and Water Conservation Fund.

East Bay and its park users have a vital interest in the trails bill. The Juan Batista de Anza trail, designated by the bill for study in accordance with § 5(c) of the National Trails System Act, would cross the East Bay region. The Juan Batista route is important for historical and recreational reasons. Residents of the East Bay area would work hard to designate the route as a full national scenic trail.

The proposed amendments to the National Trails System Act cannot be controversial. The amendments would not draw any money from the federal treasury. The amendments increase the reliance on volunteers in the development and management of the nation's trails. Indeed, the House of Representatives passed the bill, on May 11, 1982, by the overwhelming vote of 389 to 6.

We ask for your help. Thank you for your support.

Sincerely,

Charles F. Holum

CFH:meh

RE

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

6000 C STREET • SUITE C • ANCHORAGE, ALASKA 99502 • (907) 276-3235

AUG 11 AM 11: 02

August 3, 1982

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands
  and Reserved Water
3204 Dirkson Office Building
Washington, D.C. 20510

Dear Senator Wallop:

I am writing in support of S. 894 by Sen. Howard Cannon, and ask that this letter be entered in the hearing record.

With the most federal land in any state being in Alaska, the electric and telephone cooperatives here are most heavily impacted by the problem of paying for rights-of-way across public lands. We are still in the early stages of development, and we will be needing a significant number of rights-of-way across public lands in the future.

In rural Alaska, the old cooperative spirit prevails, and private land owners grant easements across their land without charge in order to get central station electric service. Many of the needs to cross public lands are occasioned by the need to serve government installations of various kinds. Why should access to public land be more costly than private land?

Even if no service to a government facility is involved in a particular line extension, we think it is entirely appropriate that access across public lands be afforded non-profit electric and telephone cooperatives at no cost. The State of Alaska has come to the same conclusion by enacting legislation in 1979 and 1981 which provide free rights of way across state lands. Why should federal land be more costly than state land?

Even without paying for rights-of-way, the cost of electric service in rural Alaska is the highest known to man. Please help us give some relief to our consumers by letting us cross public lands without charge to serve our consumers.

Sincerely,

David Hutchens

David Hutchens
Executive Director

DH:ra

cc: Sen. Ted Stevens
    Sen. Frank Murkowski
    Rep. Don Young

FERGUS ELECTRIC COOPERATIVE INC.
PM 1:24 LEWISTOWN, MT. 59457 • PHONE (406) 538-3465

August 20, 1982

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands and Reserved Water
3204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

We here in Central Montana support your efforts on Senate Bill 894. If some changes are not made regarding the Federal Land Management Policy Act, additional financial burdens will be placed on rural electrical cooperatives.

It is ironic that Fergus Electric Cooperative, Inc. serves numerous Minuteman Missile sites, national interest lands, Forest Service and BLM properties. The Act has no provisions for these entities to give us free access. Therefore, many of us are proposing that if this act persists, we will charge corresponding use fees over and above our electrical rates to compensate. I see no value in this act to the tax payers of America or to the rate payers in the 13-county area here in Central Montana.

Your help and assistance to all rural electrical and telephone cooperatives will be appreciated. Our congressional delegation has been highly supportive of F.L.M.P.A. changes. If I can assist you in any way, please do not hesitate to to call on me.

Sincerely,

Richard G. Peck

RICHARD G. PECK
General Manager and
Chairman State Land Use Committee

RGP:vsm

"OWNED BY THOSE WE SERVE"

GRAND ELECTRIC COOPERATIVE, INC.
SERVING NEARLY 10,000 SQUARE MILES OF NORTHWESTERN SOUTH DAKOTA
WITH DEPENDABLE ELECTRIC SERVICE
BISON, SOUTH DAKOTA • 57620
PHONE 605 • 244-5211

1982 AUG 26 AM 10:44

August 23, 1982

S.844

Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands and Reserved Water
3204 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Wallop:

We are concerned about the plan by the Bureau of Land Management to charge us for right-of-way across their land. What they are proposing is ridiculous.

Our concern is expressed in the enclosed resolution, which we respectfully request be made a part of the record for the hearing held on August 4, 1982 by your committee. We appreciate your interest and support on this issue.

Sincerely,

Leroy D. Schecher

Leroy D. Schecher, General Manager

LDS:gj

GRAND ELECTRIC COOPERATIVE, Inc.
Bison, South Dakota 57620

RESOLUTION

WHEREAS the federal government, under provisions of the Federal Land Policy and Management Act of 1976, is proposing to begin charging rural electric cooperatives for right-of-way on federal lands, and

WHEREAS this is intended to apply to right-of-way for lines that have been in place for many years and granted free of charge at the time, the same as other landowners in the respective rural areas, and

WHEREAS we believe it is unreasonable and a breach of committment on the part of the federal government to come now years later and begin charging.

NOW THEREFORE BE IT RESOLVED that the Grand Electric Cooperative does object to the government charging right-of-way fees on federal land and does support and urge the passage of S. 894 and HR 6789.

CERTIFICATION

I, Darrell D. Henderson do hereby certify that I am Secretary of Grand Electric Cooperative, Inc., an electric non-profit cooperative membership corporation organized and existing under the laws of the State of South Dakota; that the foregoing is a complete and correct copy of a resolution adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the 19th day of August, 1982; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 19th day of August, 1982.

(Seal)

Darrell D. Henderson
Secretary

MIDSTATE ELECTRIC COOPERATIVE, INC.
Post Office Box 127
LaPine, Oregon 97739
Phone 536-2126

1982 SEP 17 AM 10 51

September 9, 1982

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands and Reserved Water
3204 Dirksen Office Building
Washington, D.C. 20510

Dear Senator Wallop:

I understand that legislation designation S. 894 and introduced by Senator Howard Cannon of Nevada is under review at this time. Said proposal would exempt rural electric and telephone cooperatives from rental payments on rights-of-way across public lands.

In central Oregon a great portion of the land is administered by the U.S. Forest Service and the Bureau of Land Management. Our costs for obtaining right-of-way has increased dramatically since the above agencies elected to charge Rural Electric Cooperatives (i.e. the general public) annual right-of-way fees.

In theory these fees are based on the full market value of the property involved. In my opinion, the charges are often excessive, if not senseless. Allow me to present a few examples. For one substation site, we were required to pay various fees and a timber evaluation which totaled $1883. Then an annual rental of $925 was imposed. On a facility life of 30 years, the costs are nearly $30,000 which is way out of line in this area for the 3.92 acres involved. Copies of invoices received from BLM are enclosed for your review. Several of the charges and the "adjusted" rental were not imposed until after we had occupied the site and were past the point of no return!

Just this month, I have received a letter from the U.S. Forest Service informing the Cooperative to expect an annual billing on all right-of way permits issued since October 21, 1976. As of this writing the 1983 cost alone has been identified as some $1272.30. A, copy of this correspondence is enclosed as well.

Being a non-profit cooperative we have no choice but to pass these costs directly to our member consumers. These consumers are the very same citizens and taxpayers supporting the federal agencies to protect their interest in the use of the public lands.

Perhaps the most incredible case to date involves a 24.9KV distribution line we are building to supply power to a facility owned by the

-Continued-

OWNED BY THOSE WE SERVE

Bonneville Power Administration. According to contract all costs including right-of-way acquisition are being paid by the B.P.A. As you probably know B.P.A. does not pay rental for its rights-of-way across federal lands since it is a government agency. But in this case, based on the subtle point that the power line was to be constructed and owned by another party although exclusively for the use and at the cost of B.P.A., we were obliged to hire a professional land surveyor and prepare detailed maps and other documents so that rights-of-way and special use permits could be granted to the Cooperative which of course will pay an annual rental! Several thousand dollars were spent on the paper work shuffle and the same several thousand plus hundreds more will change hands from B.P.A. to the Cooperative and finally to the BLM/U.S.F.S. establishment to keep the ball rolling ad infinitum. Meanwhile John Q. Public continues to write the check-unless you seize this opportunity to breathe a little common sense into the process!

Certainly there are times when charges are applicable for the utilization of public lands, especially if the use benefits only one individual. But where the intended use is by a non-profit organization that provides a service which improves the quality of life and provides jobs for thousands of people, I simply cannot follow the logic.

I hope you will use your influence to ensure that this viewpoint is considered in the evaluation of the legislation which would provide such a relief to so many utilities and their consumers at no out of pocket cost to anyone.

Thank you in advance for your consideration.

Sincerely,

John L. Sims

John L. Sims
General Manager

JLS/dml
CC: Rep. Smith
Rep. Weaver
Rep. Throop
Sen. Hatfield
Sen. Packwood

United States
Department of
Agriculture

Forest
Service

Deschutes National Forest
211 NE Revere, Bend, OR 97701

Reply to 2720 Special Uses

Date AUG 4 1982

Subject Special-Use Permit - Change From Free Use to Fee or Charge Permit, 4/18/78, 4/15/78, 3/18/80, 4/13/78, 3/23/79, 7/8/77, 4/12/78, 7/1/77, 9/7/78, 4/16/78

To Midstate Electric
P.O Box 127
LaPine, OR 97739

RECEIVED
AUG 5 1982
MIDSTATE ELECTRIC

On September 22, 1981, we wrote you a letter regarding the fee status of all your right-of-way type permits issued since October 21, 1976. Basically, we advised you that the new regulations require fees for the utilization of National Forest land by municipal utilities and cooperatives whose principal source of revenue are derived from customer charges.

Please be advised that you will be receiving a billing in November this year and each year thereafter for each right-of-way type special-use permit issued to you since October 21, 1976. This billing will be due and payable by January 1 of each year, covering the period of January 1 through December 31. The amount of the billings will vary by permit based on the amount and value of land utilized in each permit.

The fee has been determined by taking 5 percent of the value of the land involved. In addition, each permit is also subject to a minimum fee.

Enclosed is a list of the permits involved and the fee you will be billed this November for the calendar year 1983.

If you have any questions please contact Hal Siegworth at 382-6922, ext. 381, or Linda Courtney at extension 395.

DAVID G. MOHLA
Forest Supervisor

Enclosure

MIDSTATE

Permit Date	Fee Amount
4/18/78	$280.81
4/15/78	20.00
3/18/80	20.00
4/13/78	571.41
3/23/79	100.44
7/8/77	20.00
4/12/78	84.55
7/1/77	30.00
9/7/78	20.00
4/16/78	125.09
	$1,272.30

Form 1370-20
(November 1967)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. 989763

August 20, 1980 DATE

OR 24420 PARENT SERIAL NUMBER

Prineville Dist. Office
P.O. Box 530
Prineville, OR 97754

Right-of-Way Appln. (LaPine Substation Site) (RE) SUBJECT

APPLICANT: REMITTER IF DIFFERENT THAN APPLICANT:

Midstate Electric Cooperative, Inc.
P.O. Box 127
LaPine, OR 97739

PURPOSE		AMOUNT	
Other Fees & Charges for Misc. Services XXXXXXXXXXXXXXXX	1A2499 INFORMXXXXX IN THIS	50	00
ADVANCE FILING FEE AND/OR RENTAL	COLUMN IS FOR		
	OFFICE USE ONLY.		

PAID
$ 50.00 pw
AUG 20 1980
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

REFER TO THE ABOVE CASE SERIAL NUMBER IN ALL CORRESPONDENCE.

PLEASE INFORM THIS OFFICE OF ANY CHANGE IN ADDRESS

NOTE: This notice is a receipt for monies paid the United States. If these monies are for required fees in connection with your application to lease, purchase, enter, or otherwise acquire an interest in public lands or resources, this receipt is not an authorization to utilize the land applied for and it does not convey any right, title, or interest in the land for which application is made.

RECEIPT

Form 1370–20
(November 1967)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. 989788

November [illegible] 1980 DATE

OR 24420 PARENT SERIAL NUMBER

Prineville Dist. Office
P.O. Box 550
Prineville, OR 97754

Right-of-Way Application SUBJECT

APPLICANT:

Midstate Electric Cooperative, Inc.
P.O. Box 128
LaPine, OR 97739

REMITTER IF DIFFERENT THAN APPLICANT:

PURPOSE		AMOUNT	
Other fees and Charges for Miscellaneous Services A[illegible]	142499 INFORMATION IN THIS COLUMN IS FOR OFFICE USE ONLY.	50	00
ADVANCE FILING FEE AND/OR RENTAL			

PAID
$ 50.00 pu
NOV 5 1980
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

REFER TO THE ABOVE CASE SERIAL NUMBER IN ALL CORRESPONDENCE.

PLEASE INFORM THIS OFFICE OF ANY CHANGE IN ADDRESS

NOTE: This notice is a receipt for monies paid the United States. If these monies are for required fees in connection with your application to lease, purchase, enter, or otherwise acquire an interest in public lands or resources, this receipt is not an authorization to utilize the land applied for and it does not convey any right, title, or interest in the land for which application is made.

RECEIPT

Form 1370–1
(October 1964)
(formerly 4–1173)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. A 159023

November 21, 1980 Date

Serial Number

Timber Purchased -
→ LaPine Sub Station Site Subject

Bureau of Land Mgmt.
P.O. Box 550
Prineville, OR 97754

Midstate Electric Cooperative
P.O. Box 127
LaPine, OR 97739

Remitter if different than lessee:

Default Date

PURPOSE	PERIOD		NUMBER AND CLASS	UNIT	COST PER UNIT	AMOUNT
	FROM	TO				
→ Timber Purchased (Right-of-Way)						$1,155.00

PAID
$ 1155 00
NOV 21 1980
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

RECEIVED
NOV 26 1980
MIDSTATE
ELECTRIC

Previous Balance	
Amount Payable	$1,155.00
Amount Paid	
Balance	

Date

RECEIPT

Form 1370–1
(October 1964)
(formerly 4–1173)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. A 159028

January 19, 19[illegible] Date

OR 24420 Serial Number

LaPine Substation Subject

Bureau of Land Management
P.O. Box 350
Prineville, OR 97754

Midstate Electric Cooperative
P.O. Box 127
LaPine, OR 97739

Remitter if different than lessee:

Default Date

PURPOSE	PERIOD		NUMBER AND CLASS	UNIT	COST PER UNIT	AMOUNT
	FROM	TO				
Timber removed from LaPine Substation Site Distribution Line [illegible]						308.00

PAID
$ 308.00 pw
JAN 1 1990
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

Previous Balance	
Amount Payable	308.00
Date ______ Amount Paid	
Balance	

RECEIPT

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Form 1370-20
(November 1967)

No. 989847

February 11, 1981 DATE

OR-24420 PARENT SERIAL NUMBER

Right-of-Way (Substation and Distribution Line) SUBJECT

APPLICANT:

Midstate Electric Coop., Inc.
P.O. Box 127
LaPine, OR 97739

REMITTER IF DIFFERENT THAN APPLICANT:

PURPOSE	INFORMATION IN THIS COLUMN FOR OFFICE USE ONLY.	AMOUNT	
Other Fees & Charges for Misc. Services	142499	200	00
ADVANC[illegible]NTAL	14X4875(11)	150	00
Monitoring Fee	14X4875(11)	120	00

PAID
$ 470.00
FEB 11 1990
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

REFER TO THE ABOVE CASE SERIAL NUMBER IN ALL CORRESPONDENCE.

PLEASE INFORM THIS OFFICE OF ANY CHANGE IN ADDRESS

NOTE: This notice is a receipt for monies paid the United States. If these monies are for required fees in connection with your application to lease, purchase, enter, or otherwise acquire an interest in public lands or resources, this receipt is not an authorization to utilize the land applied for and it does not convey any right, title, or interest in the land for which application is made.

RECEIPT

Form 1370–1
(October 1964)
(formerly 4–1173)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. A 155724

February 4, 1982 Date

OR 24420 Serial Number

Substation and Distribution Line
Right-of-Way Subject

Bureau of Land Management
P.O. Box 550
Prineville, OR 97754

Midstate Electric Coop
P.O. Box 127
LaPine, OR 97739

Remitter if different than lessee:

Default Date

PURPOSE	PERIOD		NUMBER AND CLASS	UNIT	COST PER UNIT	AMOUNT
	FROM	TO				
1981 Rental - Balance Due						775.00
1982 Rental						925.00

JUL 29 1982

PAID
$ 1700.00 pw
JUL 2 1982
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE, OREGON

Previous Balance

Amount Payable 1700.00

Date Amount Paid

Balance

PAYMENT DUE - MARCH 8, 1982

RECEIPT

NATIONAL R.E.A. TELEPHONE ASSOCIATION
Suite 952
600 New Hampshire Avenue N.W.
WASHINGTON, D. C. 20037
Area Code 202—338-2100

MINNEAPOLIS OFFICE
715 Cargill Building
Minneapolis, Minnesota 55402
Area Code 612—333-0201

PRESIDENT
Robert S. McClelland, Jr

VICE-PRESIDENT
Dan D. McWilliams

TREASURER
Harold L. Ericson

EXECUTIVE DIRECTOR AND COUNSEL
A. Harold Peterson

DIRECTORS
Carlton E. Appelo
*Leroy Carlson
*Vern R. Chesbro
James W. Damon
Howard Ellis
*Harold L. Ericson
Arndon O. Haynes
*James E. Heins
William L. Henning
Hugh W. Hunt
Jack C. Keen
Harry N. Lackey
*Robert S. McClelland, Jr
Fred S. McGehee
*Dan D. McWilliams
*A. Harold Peterson
Hobart G. Rand
Curtis A. Sampson
John R. Wise

*Executive Committee

August 19, 1982

Mr. Tony Bevinetto
Committee on Energy and
Natural Resources
Subcommittee on Public Lands
and Reserved Water
3204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Bevinetto:

Enclosed is a statement with respect to the bill S.894 to exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976. On behalf of the National REA Telephone Association, I respectfully request that this statement be made a part of the record of the hearings on this bill conducted on August 4, 1982.

With best regards,

A Harold Peterson

A. Harold Peterson

AHP/tac

Enclosure

Statement With Respect to S.894 Submitted to the Subcommittee on Public Lands and Reserved Water of the Senate Committee on Energy and Natural Resources

By A. Harold Peterson
Executive Director and Counsel
National REA Telephone Association
August 19, 1982

The National REA Telephone Association (NREATA), whose membership is composed solely of REA telephone borrowers, primarily the privately-owned type, is pleased to submit this statement with respect to the bill S.894. The stated purpose of this bill is to exempt rural electric and telephone cooperatives from fees for rights-of-way over federal lands, imposed pursuant to the provisions of section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §1764(g). NREATA supports S.894 with an important amendment. We urge that it be amended to exempt all REA-financed borrowers, whether privately-owned or cooperative, from such fees.

When Congress amended the Rural Electrification Act in 1949 to authorize loans for rural telephone service, its declared purpose was to assure "that adequate telephone service be made generally available in rural areas through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of adequate telephone service to the widest practicable number of rural users of such service". 7 U.S.C. §921. In pursuit of this policy, neither Congress nor the Rural Electrification Administration has ever distinguished between cooperatives and privately-owned telephone companies.

To the contrary, federal law and policy governing REA-financed companies have been consistently developed and applied without regard to the structure or form of ownership of such companies. Indeed, seventy-four percent of the more than 1,000 REA-financed telephone companies which operate in the United States today are privately-owned. The consistency which has governed the REA program to date should be applicable as well to the payment, or non-payment, of fees for rights-of-way on federal lands.

Many argue that enactment of S.894 would not be necessary if the Bureau of Land Management and the Forest Service had properly exercised their statutory discretion to waive such fees. Section 504(g) of the FLPMA specifically provides that the Secretaries of Agriculture and Interior may grant rights-of-way "to . . . nonprofit associations . . . or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned . . . for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest". Indeed, at the hearing on S.894 held on August 4, Senator John Melcher

(D-Mont.), a member of this subcommittee, stated that it was the intent of Congress, acknowledged by the then-Secretaries of Interior and Agriculture, that REA-financed cooperatives were to be exempted from such fees. Senator Melcher speaks with authority; as a member of the House of Representatives in 1976, he was a sponsor of the FLPMA and a member of the conference committee on the bill.

NREATA endorses Senator Melcher's interpretation of the FLPMA. We also note that the same sentence which authorizes exemptions for cooperatives also authorizes exemptions "to a holder where he provides without or at reduced charges a valuable benefit to the public". NREATA submits that all REA-financed privately-owned telephone companies fall within this definition and, hence, should similarly be exempt from such fees.

While neither Secretary has exercised the discretion provided in section 504 for the benefit of any REA-financed telephone companies, these electric and telephone companies clearly provide a valuable benefit to the public. With respect to "reduced charges", the USDA rural electrification program exists solely to enable rural areas to enjoy the benefits of modern electric and telephone service at rates which otherwise would be prohibitive.

Without regard to the FLPMA, the imposition of fees for rights-of-way through federal lands against REA-borrowers would be directly contrary to the congressional policy set forth in the Rural Electrification Act. Supplementing the goal of assuring adequate service to the widest practicable number of rural users, Congress, in 1973, declared "that such rural electric and telephone systems should be encouraged and assisted to develop their resources and ability to achieve the financial strength needed to enable them to satisfy their credit needs from their own financial organizations and other sources at reasonable rates and terms consistent with the loan applicant's ability to pay. . ." 7 U.S.C. §930. Fees imposed by a federal agency for rights-of-way are in direct conflict with this policy administered by a sister federal agency, the Rural Electrification Administration.

In this regard, it should be noted that, in some instances, easements across federal lands are required to be obtained, pursuant to the "area wide coverage" provision of the Rural Electrification Act, in order to provide telecommunications service to federal agencies such as the Forest Service and the Bureau of Land Management maintaining facilities on federal land. Incredibly, the rates which the government pays for that mandatory service are sometimes less than the right-of-way fees which the REA-financed company must pay to provide it.

The subcommittee has already received extensive testimony on the other practical problems which particular REA cooperatives are experiencing and of the additional burdens which the fees imposed pursuant to section 504 of the FLPMA are placing on them. It would serve no purpose to repeat those problems here. It should be emphasized, however, that these problems are not unique to cooperatives; they are shared by all REA-financed companies, both privately-owned and cooperatives. Therefore, NREATA respectfully requests that S.894 be amended and that proposed new section 504(g)(2) of the FLPMA read as follows:

> The provisions of paragraph (1) shall not apply to electric and telephone companies financed by the Rural Electrification Administration.

As noted, Congress has never distinguished between REA-financed cooperatives and REA-financed privately-owned companies with respect to either policy issues or specific REA requirements. This amendment would ensure that it would not do so in this instance either.

Before concluding, NREATA would like to take issue with one statement offered by those who support the imposition of fees on REA-financed companies. R. Max Peterson, Chief of the Forest Service, has been quoted as saying, "The intent of free permits was to promote the department's rural development objective of making power and telephone services available to rural areas. That objective is essentially complete now." Chief Peterson is wrong. The goals of the REA telephone program have not been met. Specifically, NREATA draws the attention of the subcommittee to the following:

1. 17.3 percent of all REA subscribers still received substandard 4, 5 and 8 party telephone service at the end of 1980. This compares with one party (or in some cases one and two party) standards in urban areas. Telephone call volume (and hence telephone usefulness) increases by an estimated 30 percent when a customer is upgraded from multiparty to single party service. Some REA systems still provide only 4, 5, and 8 party service to the substantial majority of their customers.

2. There is a net migration of population back to rural areas causing increased needs for financing very expensive telephone plant additions, which averaged $4,189 per initial and improved subscriber for all REA borrowers in 1980. In the West, coincidentally the area most heavily dominated by federal lands requiring rignts-of-way, that average was even greater. In one instance, in New Mexico, the average was $9,000 per subscriber.

3. Capital investment costs and operating costs are substantially higher in rural areas due to low density. Approximately 70 percent of the total investment in REA rural telephone service is in outside plant (lines, etc.) and central office equipment. The more subscribers per route mile of line, the lower the cost per subscriber. REA borrowers average only 5.26 subscribers per route mile of line which equates to roughly 10 telephones per square mile. The Bell System averages approximately 110 telephones per square mile of service area.

4. In February 1982, the backlog at the Rural Electrification Administration of initial applications for REA, Rural Telephone Bank and guaranteed telephone loans was $1,378,126,242 of which $958,116,305 had passed the stage of fully completed engineering studies.

5. The number of small rural telephone companies participating in the REA programs continues to grow, from 934 in 1967 to 1,003 today. In FY 1981, 24 telephone companies received REA loan commitments for the first time.

NREATA appreciates this opportunity to present its views on S.894 and would be happy to respond to any questions.

Rocky Mountain Telecommunications Association
ARIZONA, COLORADO, IDAHO, MONTANA, NEW MEXICO, UTAH, WYOMING
UNITY IS OUR STRENGTH FOR A DYNAMIC TELEPHONE INDUSTRY

1982 SEP 24 AM 9 12

Cheyenne, Wyoming
September 21, 1982

Senator Malcolm Wallop
Room 452
Russell Office Building
Washington, D. C. 20510

Dear Sir:

The following resolution was passed in executive session of the Rocky Mountain Telecommunications Association, Inc., annual meeting held at Tamarron in Durango, Colorado, on September 15, 1982.

The association will appreciate your vote on behalf of this bill.

Sincerely

Homer O Reynolds

Homer O. Reynolds
Secretary-Treasurer

P. O. Box 694, 1603 Capitol, Cheyenne, Wyoming 82001
307/638-8827

Rocky Mountain Telecommunications Association
ARIZONA, COLORADO, IDAHO, MONTANA, NEW MEXICO, UTAH, WYOMING
UNITY IS OUR STRENGTH FOR A DYNAMIC TELEPHONE INDUSTRY

WHEREAS: The Rocky Mountain Telecommunications Association, Inc., represents the majority of the telephone industry in the states of Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming, and

WHEREAS: These seven states constitute a major operation of providing service to the subscribers and patrons of those states, and

WHEREAS: The Officers and Directors of the Rocky Mountain Telecommunications Association, Inc., meeting in regular session at Tamarron, Durango, Colorado, on September 15, 1982, with proper motion, second and unanimous vote approved the following resolution:

BE IT RESOLVED: The Rocky Mountain Telecommunications Association, Inc., supports S 894 which exempts rural electric and telephone cooperatives from rental fees for rights-of-way granted to them with respect to Bureau of Land Management and National Forest Service lands.

Respectfully submitted

Homer C. Reynolds
Secretary-Treasurer
September 15, 1982

P. O. Box 694, 1603 Capitol, Cheyenne, Wyoming 82001
307/638-8827

SOUTH MISSISSIPPI
ELECTRIC POWER ASSOCIATION
HIGHWAY 49 NORTH / P.O. BOX 1589 / HATTIESBURG, MS. 39401
TELEPHONE (601) 268-2083

1982 AUG 10 PM 4 47

August 4, 1982

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands & Reserved Water
3204 Dirksen Building
Washington, D.C. 20510

Re: S.894

Dear Senator Wallop:

Attached is the statement of position of South Mississippi Electric Power Association regarding the imposition of use fees for rights of way across federal lands upon non-profit and governmental entities. We request your study and its inclusion in the official hearing record.

Please contact me if further information would be helpful.

Very truly yours,

Franklin V. Anderson

Franklin V. Anderson, Esq.
Staff Attorney

S.894
FTR

cc: Senator John Stennis
Senator Thad Cochran

"The Light in the Forest"

STATEMENT OF SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION

REGARDING RIGHT OF WAY FEES FOR CROSSING FEDERAL LANDS

South Mississippi Electric Power Association is a non-profit, consumer-owned generation and transmission cooperative serving eleven member distribution cooperatives covering approximately half the area of the state. It presently has over 40 miles of transmission lines using approximately 487 acres of Federal land under Forest Service management.

The addition of a use fee for this right-of-way will be another expense which must be passed to our members and the ultimate consumers we serve. We are already suffering from extreme interest rates, high material costs and high unemployment both locally and nationally.

It should be obvious that this fee is nothing more than a hidden tax imposed on our consumers.

Our rates to our members are high compared to the past and compared to inflation in general and will go higher as new and much more expensive plants and facilities are added to our system.

The people we serve need lower rates to survive. We are doing everything within our grasp to control and reduce the costs we must pass to them. We respectfully ask for passage of S.894 which would exempt rural electric and telephone cooperatives from rental payments for crossing public lands.

Respectfully tendered:

Franklin V. Anderson

Franklin V. Anderson, Esq.
Staff Attorney
South Mississippi Electric Power Association
P.O. Box 1589
Hattiesburg, Mississippi 39401
Telephone: 601-268-2083

West River
COOPERATIVE TELEPHONE
COMPANY

BISON, SOUTH DAKOTA 57620

PHONE (605) 244-5213

1982 AUG 24 AM 9 15

August 20, 1982

5894

Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands and Reserved Water
3204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

We are concerned about the plan by the Bureau of Land Management to charge us for right-of-way across their land. What they are proposing is ridiculous.

Our concern is expressed in the enclosed resolution and statement, which we respectfully request be made a part of the record for the hearing held on August 4, 1982 by your subcommittee. We appreciate your interest and support on this issue.

Sincerely,

Leroy D. Schecher

Leroy D. Schecher, General Manager

LDS:gj

Enclosures

WEST RIVER COOPERATIVE TELEPHONE COMPANY

Bison, South Dakota 57620

RESOLUTION

WHEREAS our telephone cooperative, with a density of .71 subscribers per mile of line, and others over the United States serve the most sparsely populated areas of the Nation, and

WHEREAS an important factor in providing modern telephone service in rural areas at an affordable price is the "free" easement that has been given by the landowners including the Bureau of Land Management (BLM), and

WHEREAS the BLM is now proposing to charge for right-of-way under providions of the Federal Land Policy and Management Act of 1976, and

WHEREAS this can only mean higher telephone rates for rural people who are already under severe economic strain,

NOW THEREFORE BE IT RESOLVED that members of the South Dakota Congressional Delegation, Senators Larry Pressler and Jim Abdnor and Congressmen Tom Daschle and Clint Roberts support S. 894 and HR 6789 exempting rural telephone and electric cooperatives from right-of-way charges.

CERTIFICATION

I, Gary Jorgensen do hereby certify that I am Secretary of West River Cooperative Telephone Company a telephone non-profit cooperative membership corporation organized and existing under the laws of the State of South Dakota; that the foregoing is a complete and correct copy of a resolution adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the 13th day of August, 1982; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 13th day of August, 1982.

(Seal)

Gary Jorgensen
Secretary

STATEMENT OF WEST RIVER COOPERATIVE TELEPHONE COMPANY, BISON SOUTH DAKOTA, SUBMITTED TO THE SENATE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, AUGUST 19, 1982, IN SUPPORT OF S. 894.

Our telephone cooperative serves an area of about 4,800 square miles in northwestern South Dakota. We serve 1,393 main stations on 1,897 miles of line or a density of .71 subscribers per mile of line. We provide one-party service and have an underground system. This was made possible by the REA 2% loan program. Without it, we would not have the modern telephone service that is so important to the people in the area.

The Bureau of Land Management (BLM) under provisions of the Federal Land Policy and Management Act are proposing to charge rural telephone cooperatives for the use of right-of-way on BLM land. We object to the BLM proposal to charge for the following reasons:

1. The cooperative has never paid a landowner for right-of way. All landowners have given free easement to help in providing telephone service at a price everyone can afford to pay. Use of BLM right-of-way has also been without charge, which is consistent with the cooperative's policy. For the BLM to come now and request payment for easement obtained in the past on the pretext that it would be without charge is not reasonable. If there had been a charge for use of BLM right-of-way initially, an alternate route would have been selected.

2. It is not cost-effective. In our system, we have 12.5 miles of underground telephone line on BLM land. The charge they plan to assess has not been made known to us. However, if they charge on the same basis that they charge for grazing in our area, the following example would apply.

Example:

The BLM Office in Belle Fourche charges a $1.86 per animal unit per month. The average animal unit is about four acres which amounts to 46½¢ per acre.

A strip of right-of-way 8' 3" wide, is sufficient to construct and maintain our telephone cable plant. That calculates out to one acre of right-of-way per mile. If the fee for right-of-way is set equivilent to the grazing fee, we would pay 46½¢ per acre (or mile) per year. Even if it were assumed that since we occupy the one acre for 12 full months and pay every month, the fee would only be $5.58 per acre or per mile per year. This cannot be cost effective when you consider the administrative work required of the BLM and ourselves, the extra engineering that is required of us and the extra record keeping.

Actually, underground telephone cable plant should be excluded from the charge requirement. The fact that the cable is there does not disrupt the use of the land for other purposes except in very rare cases. The BLM can make full use of the land for other purposes, most of which is grazing. Where they charge for grazing rights and also propose to charge for right-of-way, they are collecting twice for the same space. This is not right.

Another important point to consider is that we and others like us are nonprofit cooperative organizations. We are in business to provide service, not to make money.

Providing modern telephone service in sparsely settled rural areas at a price people can afford to pay has not been easy. We have and will always have to struggle with the disadvantages of low-density, high investment, weather and distance. Depressed agricultural prices are also a major concern we must deal with.

All things considered, we believe that it is in the government's best interest not to charge REA borrowers, telephone or electric, for right-of-way. Therefore, we urge this Committee and all members of the Senate to support S. 894.

Thank you,

Respectfully Submitted,

Leroy D. Schecher

Leroy D. Schecher, General Manager